

# CURRENT ISSUES IN U.S. REFUGEE PROTECTION AND RESETTLEMENT

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## HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN  
RIGHTS AND INTERNATIONAL OPERATIONS

OF THE

COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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## **CURRENT ISSUES IN U.S. REFUGEE PROTECTION AND RESETTLEMENT**

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**WEDNESDAY, MAY 10, 2006**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS  
AND INTERNATIONAL OPERATIONS,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2 o'clock p.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (Chairman of the Subcommittee) presiding.

Mr. SMITH OF NEW JERSEY. The Subcommittee will come to order. Good afternoon. Today, the Subcommittee on Africa, Global Human Rights and International Operations will hold an oversight hearing on current issues in U.S. refugee protection and resettlement.

The hearing will focus on the major current challenges facing U.S. refugee protection and resettlement policy and programs. This includes levels of funding, implementation of procedures to waive application of "material support" grounds for inadmissibility, application for the definition of "membership in a terrorist organization," current status and implementation of the "wet foot/dry foot" policy, and status of implementation of the refugee provisions of the International Religious Freedom Act of 1998. The Subcommittee will consider what the United States has done in the past year to address these issues and what it intends to do in the coming year.

I would like to start by mentioning some of the encouraging progress concerning refugees and displaced persons. The peace deal recently signed by the largest Darfur rebel group and the Government of Sudan is the first step toward peace and stability in the region. I wish to commend President Bush's strong leadership on Darfur. Our first priority must be to help create a sense of security so that refugees and Internally Displaced Persons can return to their homes and rebuild. President Bush's call for more peacekeepers is absolutely timely and important.

I would note parenthetically that on a trip in August, I visited some of those camps, Mukjar and Kalma, and I was proud of the work that the United States Government was doing in providing sustenance, food, medicine, shelter, and—with the help of the African Union troops—protection for those who were internally displaced. I would say the same for those people in Chad. We did make and are making a difference and I think the Bush Adminis-

tration deserves very high praise for what it has done and continues to do.

We need to give more humanitarian assistance to those who are suffering, and President Bush is right on point when he says he needs an additional \$225 million in emergency food aid for Darfur. His announcement that he has directed five ships loaded with food to Sudan and has ordered the emergency purchase of another 40,000 metric tons of food for rapid shipment is certainly deeply appreciated by those of us on the Hill. This is on top of the more than \$616 million in humanitarian aid we have already given to help ease the suffering of those afflicted by the conflict and more than \$150 million that we have contributed to support the AU peace mission in Darfur.

It has been American aid, first, second, and third, that has fed and cared for the refugees. Other major donors have not yet come through, and we must do so now. I believe the President's decisive steps will help convince the international community to give more, do more, and end the misery for those who have suffered in Darfur.

On Friday, the first of six North Korean refugees processed for resettlement in the United States have finally arrived. I am pleased that the refugee provisions of the North Korean Freedom Act of 2004 are, at long last, being implemented.

We welcome today Assistant Secretary of State for Population, Refugees, and Migration, Ellen Sauerbrey for her first appearance before this Subcommittee and the House. We hope and trust that this will be part of a constructive collaboration on the vital issues that you handle for our country and for the Department of State. I want to also commend you and PRM for the outstanding work you do to fulfill our commitment to victims of trafficking and to combat this modern version of slavery. I look forward to hearing your view on the most pressing challenges facing refugees worldwide and what help you need from us to do your work.

I note that in 2005 some \$996 million from all sources was spent or obligated from your bureau, and this is projected to decrease to \$914 million from all sources for 2006, and perhaps \$950 million, counting the supplemental request. Further, for 2007, the President has requested only \$888 million. This is a large decrease from 2005 and 2006; \$330 million was obligated for overseas assistance to Africa in 2005, yet the President is only asking for \$236 million in 2007. How will this affect our ability to cope with the increasing crises of refugee protection worldwide and especially in Africa? Will some of that be made up in other ways? I think that is a question that we hope to be answered in whole or in part today.

I and many of the Members of Congress have long opposed the exaggerated emphasis on repatriation rather than resettlement of refugees. This policy harms not only the refugees we have repatriated but also countless thousands of others because it reduces the moral authority which the United States can exercise in persuading other countries not to force people back to danger.

Likewise, I have long supported higher numbers for refugee admissions. Even in the years of highest refugee admissions, when there were over 100,000, they represented only a tiny fraction of total immigrants. Not only is this year's ceiling of 70,000 too low;

the actual projected intake is lower still, 54,000, and there are serious doubts that even that number can be reached.

Finally, I ask the State Department to reopen the consideration of the cases of those stateless Vietnamese refugees who remain in the Philippines. A large number were promised Philippine residence. This has not been granted and is never likely to be. A small number attempted to enter the United States fraudulently and have been forever barred. I would ask that their cases be reexamined. If the fraud they committed was minor and only due to their desperate situation, I would ask that they be shown compassion and allowed to reunite with their families.

We also welcome the distinguished witness, Rachel Brand, Assistant Attorney General for the Office of Legal Policy for the Department of Justice, and Paul Rosenzweig, Acting Assistant Secretary for Policy Development, Department of Homeland Security. I hope that they and Secretary Sauerbrey can deal with several other pressing issues.

The United States is the acknowledged world leader on refugee issues. No nation contributes more to help refugees. No nation accepts more refugees for resettlement than the United States, even if it is true that we should do more. Our defense of refugees is one of our proudest answers to those who would denigrate the role of our nation in world affairs.

But two major problems are wreaking havoc with our immigrant resettlement program. Our immigration laws, amended by the Patriot Act and the Real ID Act, seek to exclude from our shores all terrorists and those who would aid and abet them. It, therefore, renders inadmissible all of those who have knowingly given support to terrorist groups, not just those who pull the trigger or plant the bomb, but all of those who facilitate terrorism ought to be excluded from the blessings of life in America.

Congress knew that there would be situations where an otherwise qualified refugee should not be excluded because his or her support was unwilling, involuntary, or so minor or inconsequential that no reasonable person could conclude that they had facilitated a terrorist act. Congress, therefore, gave the Executive Branch the authority to waive material support grounds for inadmissibility and charged the Secretaries of State and Homeland Security and the Attorney General to come up with procedures and guidelines to make such waivers.

The Real ID Act became law just over a year ago, yet the guidelines have not been issued despite repeated promises that they are imminent. We are more than halfway through the fiscal year. Without quick action, we will not be able to come close to our immigration target of 54,000 refugees resettled.

We all welcomed the Secretary of State's recent waiver, on Friday, May 5, of the material support provision for some 10,000 Burmese refugees in Tham Hin refugee camp, but that waiver, unfortunately, only applies to this particular group; and although it is very much welcomed, it would not apply to thousands of others: Colombians, other Burmese, Cubans who offered support to armed opponents of Castro in the sixties, Mong refugees in Thailand, Vietnamese Montagnard refugees in Cambodia, Liberians, and Somalis. It has reportedly also prevented some 500 asylum seekers in the

United States from being granted permanent refuge here. The State Department or the Attorney General will have to seek separate waivers for each of those individual groups.

It would also not help many of the refugees at the Tham Hin camp who have been members of the Karen National Union, the KNU, the resistant group which defends these persecuted ethnic groups from the murderous Burmese junta.

Here we come to the second major problem: The definition of a "terrorist group." Most of us think we know what terrorism, terrorists, and terrorist groups are. Terrorism is violence directed against innocent civilians to further some political aim, and terrorists and terrorist groups do just that. Our laws call on the Secretary of State to designate certain groups as terrorist groups. Other groups take up arms to resist tyrannical regimes, just as our founding fathers engaged in armed resistance to a relatively benign despotism. While we have been told that the current law does not allow such distinctions, there must be a way to distinguish between genuine terrorists and legitimate resistance groups. If current law does not do so, then we need to fix it.

I would welcome suggestions from our panelists as to how we may need to change the law so that it no longer reaches such absurd results.

Let me move from the abstract provisions of law and numbers to real cases. I hope these are exaggerations, but I fear they are not.

In Sierra Leone, a woman was kept captive in her house for 4 days by guerrillas. The rebels raped her and her daughter and cut them with machetes. She would be eligible to come to safety in the United States, but she has been put on indefinite hold because American law says that she provided material support to terrorists by giving them shelter.

In Colombia, the leftist guerrilla group, FARC, often kidnaps civilians and demands ransoms from their relatives. FARC extracts a war tax in the regions it controls upon threat of serious harm. Nearly 2,000 Colombians facing death or violence who pay such ransoms or taxes were determined by the UN to be refugees, but they have been denied United States resettlement for providing material support to terrorists.

In his second inaugural address, President Bush made a stirring commitment to oppressed people yearning to be free, and he said, and I quote:

"All who live in tyranny and hopelessness can know that the United States will not ignore your oppression or excuse your oppressors. When you stand for your liberty, we will stand with you."

Now is the time to make good on these words. We must not abandon to death, squalor, and hopelessness those who have heeded our words and stood up for their liberty. After years of effort and with great bipartisan support, the International Religious Freedom Act of 1998 became law. It recognized the crucial importance of religious liberty in our foreign policy. It also recognized that claims of religious persecution and their adjudication raise many complicated issues and dealt specifically with such issues.



Sections 602 and 603 call for specific training for all who deal with refugee admissions and asylum cases.

Congress also mandated that guidelines be developed to guarantee that contractors and foreign hired personnel who deal with immigration issues not have biases which would prejudice them against proper evaluation of refugee claims of religious persecution.

We would like to hear from each of our Government witnesses how their departments have complied with these sections of the law. We are concerned that serious deficiencies exist with such training, not the least because of the embarrassing reports surrounding the case of *Li v. Gonzales*.

Mr. Li, a Chinese Christian, was arrested and tortured and faced a prison sentence for belonging to an unregistered church. He escaped to the United States and applied for asylum as a refugee. The immigration judge who tried his case found that Li was credible and had suffered persecution and should be allowed to stay. But the INS appealed, and the 2003 Board of Immigration Appeals reversed the judge's decision.

The BIA found that Li had honestly described how the police beat and tortured him with an electronic shock device, forced him to sign a confession, and then required him to clean public toilets without pay after his release. But it then, incredibly, ruled that Li was punished for violating laws on unregistered churches that China had a legitimate right to enforce. A Federal appeals court upheld the BIA just last fall after protests by religious and other human rights groups, including the U.S. Commission on International Religious Freedom and the Office of the United Nations High Commission for Refugees. DHS asked BIA to vacate its decision, which it did so 2 days later. In November, the Fifth Circuit followed suit and vacated its decision.

Justice finally triumphed, but this case betrays the almost complete ignorance of IRFA of the standards it mandates in judging religious persecution on the part of many officials. I would like to hear perhaps what has been done to avoid such travesties in the future.

I would point out parenthetically that that legislation was bipartisan, but it was difficult to get passed. It was opposed on the record by the Clinton Administration, who said that such legislation would create a hierarchy of human rights and that somehow religious freedom was trumping other human rights issues, which turned out to be unmitigated nonsense.

So those sections were fought tenaciously for, and we hope that they will be faithfully implemented. Section 604 of IRFA bars the entry into the U.S. of any alien who, while serving as a foreign government official, was responsible for or directly carried out particularly severe violations of religious freedom. In March of last year, we had a tremendous controversy over the governor of a state in India who had been complicit in murderous persecution of Muslims in his state. The outcry in Congress and throughout the country led to the revocation of his visa. I would be interested in knowing what policies are in place to deny visas and to deny entry to those who are consistent violators of religious freedom.

I am also concerned how expedited removals and interdictions at sea may be affecting genuine refugees. I would like to ask unani-

mous consent that my entire statement be made a part of the record.

[The prepared statement of Mr. Smith of New Jersey follows:]

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS

The Subcommittee will come to order, and good morning to everyone.

Today the Subcommittee on Africa, Global Human Rights and International Operations will hold an oversight hearing on Current Issues in U.S. Refugee Protection and Resettlement. The hearing will focus on the major current challenges facing U.S. refugee protection and resettlement policy and programs, such as levels of funding, implementation of procedures to waive application of "material support" grounds for inadmissibility, application of the definition of "membership in a terrorist organization" and its affect on refugee resettlement, current status and implementation of the "wet foot/dry foot" policy, and status of implementation of the refugee provisions of the International Religious Freedom Act (IRFA) of 1998. The Subcommittee will consider what the U.S. has done in the past year to address these issues and what it intends to do in the coming year.

I would like to start by mentioning some of the encouraging progress concerning refugees and displaced persons. The peace deal recently signed by the largest Darfur rebel group and the government of Sudan can be the first step toward peace and stability in the region. I wish to commend President Bush's strong leadership on Darfur. Our first priority must be to help create a sense of security so that refugees and IDPs (internally displaced persons) can return to their homes and rebuild. President Bush's call for more peacekeepers is absolutely timely. But right now we need to get more humanitarian assistance and food to those suffering, and I welcome the President's intention to ask Congress for an additional \$225 million in emergency food aid for Darfur, and his announcement that he has directed five US ships loaded with food to head to Port Sudan and that he has ordered the emergency purchase of another 40,000 metric tons of food for rapid shipment. This is on top of the more than \$617 million in humanitarian assistance we have already given to help ease the suffering of those most affected by the conflict, and more than \$150 million we have contributed to support the African Union mission in Darfur. It has been American aid, first, second and third that has fed and cared for the refugees. Other major donors have not yet come through, and must do so now. The President's decisive actions will help convince the international community to give more, and do more, to end the misery in Darfur. I led a mission to the IDP camps in Darfur and met face-to-face with President Bashir this past August. No one who has been to Darfur can doubt the urgency of decisive action.

On Friday, Secretary of State Rice announced the long-awaited waiver, which will allow us to finally begin the resettlement of the Burmese refugees in Thailand. Much more needs to be done, to protect and resettle the refugees, but most of all to convince the Burmese Junta to desist from its brutal practices. In defiance of the world community, it has again begun murderous campaigns against its ethnic minorities, and produced even more refugees and IDPs. The UN needs to act, and to act now.

And finally, the first six North Korean refugees processed for resettlement in the U.S. have arrived. I am pleased that the refugee provisions of the North Korea Freedom Act of 2004 are at long last being implemented.

We welcome today Assistant Secretary of State for Population, Refugees and Migration (PRM) Ellen Sauerbrey to her first appearance before the House of Representatives. We hope and trust this will part of a constructive collaboration on the vital issues you handle for our country at the Department of State. I want at the outset to commend you and PRM for the outstanding work you have been doing to fulfill our commitment to victims of trafficking and to combat this modern version of slavery. I look forward to hearing your view of the most pressing challenges facing refugees worldwide, and what help you need from us to do your work.

I note that in 2005, some 996 million from all sources was spent or obligated for your bureau, and that this is projected to decrease to 914 million from all sources USDOL for 2006, with perhaps 950 million counting the supplemental request. Further, for 2007, the President has requested only 888 million USDOL. This is a large decrease from 2005 and 2006. About 330 million was obligated for overseas assistance to Africa in 2005, yet the President is only asking for 236 million for 2007. How will this affect our ability to cope with the increasing crises of refugee protec-

tion worldwide, and especially in Africa? Will some of this be made up in other ways?

I and many other members of Congress have long opposed the exaggerated emphasis on repatriation, rather than resettlement of refugees. This policy harms not only the refugees we have repatriated, but also countless thousands of others, because it reduces the moral authority which the United States can exercise in persuading other countries not to force people back to danger. Likewise I have long supported higher numbers for refugee admissions. Even in the years of highest refugee admissions (over 100,000), they represented only a tiny fraction of total immigrants. Yet not only is this year's ceiling of 70,000 too low, the actual projected intake is lower still, 54,000, and there are serious doubts that even that number can be reached.

I must also express my concern that we are not doing enough to protect and resettle Montagnard refugees who have fled to Cambodia, or to protect those who have been repatriated to Vietnam, often involuntarily. There is ample evidence that Montagnards who attempt to flee Vietnam, even if not persecuted before, will be persecuted after forced repatriation. They are subject, at the least, to constant surveillance and harassment, often to physical abuse, torture and imprisonment. Right now there are several dozen Montagnards in Cambodia who have been turned down by UNHCR, but referred to us for further consideration. I urge that their cases be given full consideration, and that they not be repatriated involuntarily.

Finally, I ask the State Department to reopen for consideration the cases of those remaining stateless Vietnamese refugees in the Philippines. A large number were promised Philippine residence. This has not been granted, and is never likely to be. A smaller number attempted to enter the U.S. fraudulently, and have been forever barred. I would ask that their cases be re-examined. If the fraud they committed was minor and only due to their desperate situation, I would ask that they be shown compassion and be allowed to reunite with their families.

We also welcome distinguished witnesses Rachel Brand, Assistant Attorney General for the Office of Legal Policy, the Department of Justice (DOJ), and Paul Rosenzweig, Acting Assistant Secretary for Policy Development, Department of Homeland Security (DHS). I hope that they and Ms. Sauerbrey can deal with several other pressing issues.

The United States is the acknowledged world leader on refugee issues. No nation contributes more to help refugees, no nation accepts more refugees for resettlement than the U.S., even if it is true that we should do more. Our defense of refugees is one of our proudest answers to those who would denigrate the role of our nation in world affairs.

But two major problems are wreaking havoc with our immigrant resettlement program. Our immigration law (INA—Immigration and Naturalization Act), as amended by the Patriot act and the Real ID Act, seeks to exclude from our shores all terrorists, and all those who would aid and abet them. It therefore renders inadmissible all those who have knowingly given material support to terrorist groups. Not just those who pull the trigger or plant the bomb, but all those who facilitate terrorism ought to be excluded from the blessings of life in America.

But Congress knew that there would be situations where an otherwise qualified refugee should not be excluded because his or her support was unwitting, involuntary, or so minor or inconsequential that no reasonable person could conclude that it had facilitated a terrorist act. Congress therefore gave the executive branch the authority to waive material support grounds for inadmissibility, and charged the Secretaries of States and Homeland Security, and the Attorney-General, to come up with procedures and guidelines to make such waivers. The Real ID Act became law just over a year ago (May 11, 2005). Yet no such guidelines have been issued, despite repeated promises that they were imminent. We are more than half-way through the fiscal year; without quick action, we will not be able to come close to our immigration target of 54,000 refugees resettled.

As I mentioned previously, we all welcomed the Secretary of State's recent waiver on Friday May 5 of the "material support" provision for some 10,000 Burmese refugees in the Tham Hin (TOM HIN) refugee camp. But that waiver, unfortunately, only applies to this particular group of refugees, and will not apply to thousands of others: Colombians, other Burmese, Cubans who offered support to armed opponents of Castro in the 1960's; Hmong refugees in Thailand; Vietnamese Montagnard refugees in Cambodia; Liberians and Somalis. It has reportedly also prevented some 500 asylum seekers in the United States from being granted permanent refuge here. The State Department or the Attorney General will have to seek separate waivers for each of those individuals or groups.

It will also not help many of the refugees even at Tham Hin (TOM HIN) who have been members of the Karen National Union, the armed resistance group which de-

fends this persecuted ethnic group from the murderous Burmese junta. And here we come to the second major problem, the definition of a “terrorist group.”

Most of us think we know what terrorism, terrorists and terrorist groups are. Terrorism is violence directed against innocent civilians to further some political aim, and terrorist and terrorist groups do just that. Our law calls on the Secretary of State to designate certain groups as terrorist. Other groups take up arms to resist tyrannical regimes, just as our Founding Fathers engaged in armed resistance to a relatively benign despotism. But we have been told that the current law does not allow such distinctions. There must be a way to distinguish between genuine terrorists, and legitimate resistance groups. If current law does not do so, then we need to fix it. I would welcome suggestions from our panelists as to how we need to change the law so that it no longer reaches such absurd results.

But let me move from abstract provisions of law and numbers to real cases. I hope these are exaggerations, but I fear that they are not

In Sierra Leone a woman was kept captive in her house for four days by guerrillas. The rebels raped her and her daughter and cut them with machetes. She would normally be eligible to come to safety in the United States. But she has been put on indefinite hold—because American law says that she provided “material support” to terrorists by giving them shelter.

During the war in Liberia, rebels came to a woman’s home, murdered her father in front of her and then raped her repeatedly. The rebels then abducted her, held her hostage, and forced her to cook and wash for them. After she escaped to a refugee camp, the DHS considered the tasks she had performed for the rebels as “material support,” and she is on hold.

In Colombia, a paramilitary group kidnapped a young man and forced him to dig graves along with other captives. The victims, many of whom were shot when their work was finished, never knew if one of the graves would become their own. This man escaped, but he would be barred from resettlement in the United States under the “material support” provision because he provided “services” to a terrorist organization when the paramilitaries forced him to dig graves, including possibly his own.

In Colombia, the leftist guerrilla group FARC (Fuerzas Armadas Revolucionarias de Colombia) often kidnaps civilians and demands ransom from their relatives. FARC also requires the payment of a “war tax” from Colombians in the regions it controls, upon threat of serious harm. Nearly 2,000 Colombians facing death or violence who paid such ransoms or “taxes” were determined by the United Nations to be refugees, but they have been denied U.S. resettlement for providing “material support” to terrorists.

FARC guerrillas killed a farmer who couldn’t pay the \$250 they demanded. They raped his wife and her sister. Because the FARC had taken livestock from the farm, U.N. refugee officers feared the women would be rejected by the United States for providing support to terrorists. Fortunately, the UN settled the women in another country, as it does now with all Colombian refugees.

It has been reported that DHS has interpreted the laws so rigidly that one DHS lawyer argued in an immigration appeals case that any level of support—as little as a dime provided under duress or unwittingly—would bar a deserving refugee from U.S. entry. A judge noted that, under this interpretation, an Afghan who aided the Northern Alliance against the Taliban would be denied refuge. The fact that the U.S. was allied to the Northern Alliance to defeat the Taliban and al-Qaeda would make no difference. I sincerely hope our witnesses can refute me on this point.

The Northern Alliance are not the only U.S. allies who are barred. Many Vietnamese Montagnards fought alongside U.S. forces during the Vietnam War and were then murderously oppressed by the Vietnamese government. During the war, the United States helped arm a Montagnard group called the United Front for the Liberation of Oppressed Races (FULRO), which continued to struggle for autonomy after the war ended. This group ceased to exist in 1992, when a band of nearly 400 fighters disarmed and were resettled in North Carolina. Now the group is being treated as a terrorist organization, and 11 Montagnards still stuck in Cambodia would be denied refugee status because in the past they had offered the group “material support.” Tibetan refugees in Nepal, who were trained by the CIA to try and liberate Tibet from China, Cubans who fought against Castro, or aided those who did, all would be barred from the U.S. Jews who bravely resisted Nazi terror and survived to tell about it would have faced exclusion if the law were interpreted in the past as it is now.

In his second inaugural address, President Bush made a stirring commitment to oppressed people yearning to be free: “All who live in tyranny and hopelessness can know: the United States will not ignore your oppression, or excuse your oppressors. When you stand for your liberty, we will stand with you.” Now is the time to make

good on these words: we must not abandon to death, squalor and hopelessness those who have heeded our words and “stood up for their liberty.”

After years of effort, and with great bipartisan support, the International Religious Freedom Act (IRFA) of 1998 became law. It recognized the crucial importance of religious liberty in our foreign policy. IRFA recognized that claims of religious persecution and their adjudication raised many complicated issues, and dealt specifically with such issues. Sections 602 and 603 called for specific training for all consular officers, indeed for all Foreign Service Officers who deal with refugee admissions, all officers of the Justice Department (and now the Department of Homeland Security as well), who adjudicate asylum cases, and all immigration judges. Such training was to “include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices.” Congress also mandated that guidelines be developed to guarantee that contractors and foreign-hired personnel who deal with immigration issues not have biases which would prejudice them against proper evaluation of refugees’ claims of religious persecution.

We would like to hear from each of our government witnesses how their departments have complied with these sections of the legislation. We are concerned that serious deficiencies exist with such training, not least because of the embarrassing reports surrounding the case of Li vs. Gonzales.

Mr. Li, a Chinese Christian, was arrested and tortured, and faced a prison sentence for belonging to an unregistered “house church.” He escaped to the U.S. and applied for asylum as a refugee. The immigration judge who tried his case found that Li was credible and had suffered persecution, and should be allowed to stay.

But the INS appealed. In 2003, the Board of Immigration Appeals (BIA) reversed the judge’s decision. The BIA found that Li had honestly described how police beat and tortured him with an electric shock device, forced him to sign a confession, and required him to clean public toilets without pay after his release. But it then, incredibly, ruled that Li was punished for violating laws on unregistered churches that it said China has a legitimate right to enforce. Li, the BIA concluded, feared legal action or prosecution, not persecution. Even worse, in August 2005, a three-judge panel of the federal Fifth Circuit Court of Appeals affirmed the BIA’s ruling. The U.S. Attorney’s Office argued that China was simply motivated by a desire to maintain social order, not to persecute based on his religious beliefs. According to the Fifth Circuit judge writing the opinion in the case, “While we may abhor China’s practice of restricting its citizens from gathering in a private home to read the gospel and sing hymns, and abusing offenders, like Li, who commit such acts, that is a moral judgment, not a legal one,” he wrote. Because the Chinese government tolerates Christianity, so long as it’s practiced in a registered group, the Fifth Circuit concluded that reasonable and substantial evidence supported the BIA’s decision that Li was punished for illegal activities and not for his religion.

After protests by religious and other human rights groups, including by the US Commission on International Religious Freedom (USCIRF) and the office of the United Nations High Commission for Refugees (UNHCR), DHS on October 4, 2005 asked the BIA to vacate its decision, which it did two days later. In November, the Fifth Circuit followed suit and vacated its decision. Justice finally triumphed, but this case betrays almost complete ignorance of IRFA (the Appeals Court decision does not even mention IRFA in its decision) and of the standards it mandates in judging religious persecution on the part of many officials. I would like to hear what has been done to avoid such travesties in the future.

Section 604 of the IRFA bars the entry into the United States of any alien who, while serving as a foreign government official, was responsible for or directly carried out particularly severe violations of religious freedom. In March last year we had a tremendous controversy over the visa of Governor Modi of Gujarat State in India, who had been complicit in the murderous persecution of Muslims in his state. The outcry in Congress and throughout the country led to the revocation of his visa. I would be interested in knowing what policies are in place to deny visas, and to deny entry, to those who are consistent violators of religious freedom.

I am also concerned with how expedited removals and interdiction at sea may be affecting genuine refugees. I am concerned that the USCIS Asylum Corps, who have the expertise and training to deal with refugees, may lose its refugee protection functions in the expedited removal process. This would be unfortunate, to say the least. The so-called “wet foot/dry foot” policy, whereby Cuban refugees who make it to dry land in the U.S. are given full consideration for U.S. resettlement, but those interdicted at sea are subject to almost certain repatriation to one of the most odious regimes on earth, is deeply troubling. According to the Congressional Research

Service, in 2005, 2,700 Cubans were interdicted at sea. Approximately 2,400 expressed a fear of return. Of those, DHS determined that about 60 had a credible fear of return to Cuba. They were taken to the Guantanamo Bay detention center for further screening. At Guantanamo, some 19 were found to have a well-founded fear and were referred to DOS for third country resettlement. That is less than a tenth of a percent. Something has got to be dreadfully wrong in the process. That people would try so desperately and at such high risk to leave Cuba, yet nearly none had any fear of persecution, is so unique a phenomenon that it is scarcely credible. I will be interested in hearing how this could be happening.

We shall now hear from our panel of government witnesses.

Mr. SMITH OF NEW JERSEY. At this point, I yield to Mr. Payne for any opening comments he might have.

Mr. PAYNE. Thank you very much, Mr. Chairman, for calling this very important meeting on the current issue of U.S. refugee protection and resettlement. This whole question of the refugee situation is a very serious question, and I am glad that we are focusing on refugee protection and resettlement programs in the U.S.

The refugee situation, particularly in Africa, is still a major challenge facing our world today. According to the Congressional Research Service, the United Nations High Commission for Refugees (UNHCR) reports that, beginning in 2005, the total number of people of concern totaled 19.2 million, which includes 9.2 million refugees, more than 389,000 asylum seekers, 1.5 million returnees, 5.6 million IDPs, and more than 2 million others who remain vulnerable. The overall figure of 19.2 million increased by 2.2 million from 2004 to 2005; however, the number of refugees dropped. In 2005, the number of new refugees was 232,100, with the major displacement coming from Africa.

While these conflicts on the continent of Africa still remain, overall, in Africa, it is much more peaceful than it has ever been before and more peaceful than it was in the 90s. Of course, following World War II and the Cold War, there were many conflicts in Africa because the Cold War was fought on the soil there, but in the 90s it was more peaceful than ever, therefore, of course, creating less refugees than what we had previously.

The 1990s were marred by civil war and ethnic clashes, including the civil war in Sudan against the people of the south, a war that went on for 21 years, displacing 4 million people and resulting in the death of over 2 million people in that north-south conflict, which was brought to a conclusion with the comprehensive peace agreement in Navashna that was signed to end that strife. However, of course, we know that in Darfur, leading to the conclusion of the north-south conflict, the Government of Sudan attacked the Darfurians, and we know about the tragic situation there, with several million people displaced and 250,000 living in Chad.

We know, in the 90s, there was the Rwandan genocide; the ghastly war in the DRC where millions died; Liberia's civil strife where we are finally seeing the trial to come soon of Charles Taylor, infamous murderer from Liberia; and the Ethiopian and Eritrea border dispute. These conflicts caused the flight of millions of people from their communities and from their countries. Millions of refugees and internally displaced people, IDP, still languish in camps, and others struggle to survive in foreign communities where they hope for the day when they can return to their homes but to live there in safety.

As we know, several conflicts currently exist in Africa, including the genocide in Darfur, Sudan, which accounts for 146,900 refugees in 2005; the crisis in the Eastern Democratic Republic of the Congo, which accounted for 38,100; and the continuing strife and lawlessness in Somalia, where 9,100 refugees exist. Africa hosted more than 25 percent, roughly 4.9 million, of people of concern reported by the UNHCR, and Africa is only second to Asia, where the numbers are greater.

So while there are few shooting wars left in Africa, we have to increase efforts toward ending those conflicts, build on the progress that has been made, and remain engaged to ensure a lasting peace while protecting refugees and IDPs that fled during those crises.

The next challenge is ensuring the safe return of refugees and IDPs. IDPs often receive less attention than refugees. As you know, the UNHCR may not deal with IDPs because IDPs are generally people who are displaced in their own country, and the UNHCR may only deal with people who are refuged in a foreign land, and so, internally, it is difficult for the UNHCR to be officially involved. There are an estimated 25 million IDPs worldwide, many of which are in Africa. UNHCR provides assistance on only roughly 6 million indirectly of the 25 million worldwide due to the legal circumstances surrounding it.

Donor fatigue is another problem. As we have heard, even in Sudan, the daily rations of calories in the Darfurian region has been reduced by the UNHCR from 2,100 calories per day to 1,050. Of course, the 2,100 was totally insufficient, but half of that now is going to really create a very serious problem.

So donor fatigue and insufficient contributions to UNHCR from donor nations for the refugees and IDP crisis worldwide is also inhibiting more assistance. The U.S., which has already been indicated by the Chairman, is certainly the largest donor toward humanitarian issues, but we still will have to do more and push our allies to do more.

The issue of asylum and resettlement in the United States is of great concern to me. Over the last 5 years, the levels of asylum seekers granted assistance and refugee resettlement in the United States has actually dropped significantly while the numbers are growing by leaps and bounds. Although U.S. refugee admissions have increased from the post-9/11 historic low in Fiscal Year 2002 of only 27,100 and Fiscal Year 2003 of 28,422, they still remain well below the pre-2002 level. Admissions in Fiscal Year 2004 and Fiscal Year 2005 were below 54,000, compared to a refugee ceiling of 70,000 each year. We are not living up to the quotas, which I think are even low, but we are only coming up with 60 to 70 percent of what we are allocating, and as we have indicated, this has happened particularly since 9/11.

I still have serious concerns about the “wet foot/dry foot” policy we apply toward Cuban refugees seeking assistance in resettlement in the United States while we turn away refugees fleeing from Haiti, whose economic, political, and social conditions have been extremely more dire than that of Cuba, certainly much more dire than that of Mexico, where we are looking at policies where we will allow guest workers, and we will perhaps have amnesty, and we

will perhaps have the 12 million that are undocumented and illegal in the country, looking at ways to accommodate them.

But a person from Haiti who comes in a boat, who comes across the ocean coming for the same kind of economic asylum as Mexicans, as Cubans, a Haitian is arrested, put in handcuffs, and taken back to their country. It is simply racial discrimination, period, no other way to describe it, but it continues as we sit here today.

We must also ensure that asylum seekers are detained while awaiting trial in detention centers. We must have better conditions. It is absolutely criminal that asylum seekers are treated like criminals. In a detention center in Elizabeth, New Jersey, 4 or 5 years ago, there was actually a disturbance there because of the poor treatment of these people who are not convicted of anything. I even tried to get into a hearing, and I was kept out for about 25 minutes before the judge allowed me, as the congressman, to sit in the court.

We have a human rights commission from the city of Elizabeth, New Jersey, so incensed that the entire commission came into my office to meet about 3 weeks ago because of the inhumane treatment and the disrespect that these judges have for people who are there in these courts.

As a matter of fact, it was even mentioned by one of the high courts that the immigration courts have to be more fair. The working conditions are poor. Salaries are \$6.50 an hour for corrections officers or whatever they are called. As a result, these institutions are getting what they are paying for, and it is wrong, and I think that we should have a hearing at least looking into the manner in which these courts are held and the treatment that these folks are given. It is wrong. Like I said, a person who comes here is not a criminal. They should have due process. If they are here illegally, then they must be sent back, but they should not be treated like criminals during that period of time.

So with that, Mr. Chairman, I look forward to hearing the testimony of our witnesses. Thank you very much.

Mr. SMITH OF NEW JERSEY. Thank you, Mr. Payne.

Mr. Tancredo?

Mr. TANCREDO. Just briefly, Mr. Chairman, I, of course, want to add my support for the position taken by the Chairman and Ranking Member in regard to what seems to be arbitrary, not necessarily capricious, but certainly a bureaucratic confusion that exists when attempting to determine who exactly is or is not aiding and abetting a terrorist organization. However, I must also say that I, on the other hand, would be concerned that we would go too far the other way and accept any claim of refugee status as an automatic admission into the United States.

I know that it is a difficult task to determine the validity of some of the cases that are brought in front of you. It makes it more difficult to support you when there are these cases like the Burmese and others where it seems incredibly clear that their support, if anything, was for an organization that we would have sympathy with. So that is why I want to make sure that those things do not happen because then the push will be to make sure that everybody who claims that status will get it, and it certainly is not what I



want to see happen. So I will be happy to hear the testimony. Thank you, Mr. Chairman.

Mr. SMITH OF NEW JERSEY. Ms. McCollum?

Ms. MCCOLLUM. Thank you. I am very pleased that we are having this hearing today. Having had the opportunity to visit refugee camps, I am particularly concerned about the issue of gender-based violence, having spoken to many women and also women who are providing those services in the refugee populations.

The women that I met with in Darfur, northern Uganda, the Democratic Republic of the Congo, and other victims of violent conflict that I have had an opportunity to meet; all of these women, when they share their stories of rape, on the gender-based violence and attacks against them, and how it is used as a work paper, these women, and quite often girls, as we will hear, I am sure, from some of the testimony that has been provided in writing as well as orally, after they have been raped or victimized, quite often the help that they receive is very little, if any at all.

That also includes when they are in the refugee camps and when they are being attacked, repeatedly sometimes, within the refugee camps. I am interested in knowing how we are saying that we as a country are doing a lot in responding to gender-based violence when I look at the number of refugees and the number of dollars that we are putting into the program, and from the letter that I have, a background letter that I have, in my information here, the United States is relying on NGOs to address this critical issue. But how much are we prompting the NGOs to do already out of a limited supply and a short budget that they are receiving to already do the jobs that they have here?

Then when it comes to women's access to health care, not only emotional counseling and the sensitivity training that people are trying to do in the camps to make this gender-based violence stop, what are we doing to provide women adequate health care, including the women who were afraid that they once again would be subjected to rape, access to birth control?

So I look forward to hearing the testimony before us and thank the Chairman very much for having this hearing. I would also like to comment on Mr. Payne's remarks on Haitian refugees and fully agree with that.

Mr. SMITH OF NEW JERSEY. Thank you very much. Ms. Lee?

Ms. LEE. Thank you, Mr. Chairman. I want to thank you also for the hearing, and all of our witnesses, hello and thank you for being here.

I guess I would just like to say a couple of things. First of all, I think really it is a moral obligation to the world that we protect refugees and asylum seekers. We have got to do that. The President has set aside, I guess, 70,000 slots for refugees seeking entrance into the United States, but there are over 19 million refugees worldwide seeking safe haven. So I think we have got to do more, and I am not sure what it is we need to do, but we have got to do more to extend a safe place and a new life for refugees by clearing backlogged cases, reuniting families, increasing the entry ceiling for countries in conflict.

Of course, some areas are especially of concern and of interest to me—Africa, Haiti—and also refugees living with HIV and AIDS.

Africa has seven peacekeeping missions now. There are millions of African men, women, and children who are in dire need of refugee assistance in terms of their flee from political, religious, and social persecution, yet we have only opened our doors to about 20,000 refugees annually.

In addition to the needs of Africans, there is a tremendous need in terms of the Caribbean—Haiti, for example. Again, we watched Haiti's democracy really deteriorate right in front of our eyes, and in the United States, only 535 asylum seekers were allowed out of 5,057 cases. That was, I think, outrageous. Since 2000 there has been a total of about 23,000 Haitian asylum cases and more than 2,600 approved. Again, contrast that to the 5,600 Cuban refugees in 2003 and 4,900 in 2004.

So I think that there, quite frankly, is a double standard in our immigration policy that needs to be looked at, reviewed, and revised. So I look forward to hearing from you today on those specific issues. Thank you, Mr. Chairman.

Mr. SMITH OF NEW JERSEY. Thank you. Ambassador Watson?

Ms. WATSON. Thank you so much, Mr. Chairman, and, again, we want to thank you for convening this hearing.

The experience of refugees is central to the American experience. From the beginning of our nation, people fleeing tyranny and poverty have helped shape America's character and values. Whether they arrived 400 years ago or 4 days ago, the continuing contributions of refugees are fundamental to the America we know and love. For this reason, we have a sacred obligation as Americans to support people fleeing persecution and want in their hour of need, and this obligation is as much to ourselves as to the people we seek to help.

America is stronger when people fleeing conflict get the support they need so that they can return home ready to rebuild their shattered societies, and America is stronger when those who choose to make their life in America find their new neighbors welcoming and appreciative of their new contributions. I hope we will hear from our Government witnesses about some of the challenges they are facing in their efforts to conduct our refugee relief efforts. I have a number of concerns, particularly about the human cost of our constrained refugee-relief budget, as well as how we can address the number of deserving asylum seekers who face huge challenges trying to enter into our country.

I also would like to ask about efforts to provide education to children in refugee populations to ensure that the time children spend in refugee camps is not deducted from their futures.

But I hope to bring up one issue in particular because it often gets neglected in discussions about refugees, and that is the issue of statelessness: The plight of people who lack effective citizenship in any country. Stateless persons are a highly vulnerable group that is likely ignored and too often falls between the cracks of government and refugee relief bureaucracies.

Mr. Chairman, I would ask unanimous consent that three reports by Refugees International on stateless persons be included in the hearing record.

Mr. SMITH OF NEW JERSEY. Without objection, so ordered.

[The information referred to follows:]

<p>"Promises are made by the authorities, but in practical life there are no changes."</p>	<p><b>OVERVIEW</b></p> <p>Syria is at a critical crossroads, faced with a timely opportunity to maintain stability and security in the country by realizing the nationality and its concomitant rights of all residents. In particular, an estimated 300,000 stateless Kurds live within the country's borders, but are in a unique situation in relation to the larger Kurdish population due to a 1962 census that led to their denationalization.</p> <p>The lack of nationality and identity documents means that stateless Kurds, for all practical purposes, are rendered non-existent. Their basic rights to education, employment, property ownership, political participation, and legal marriage are severely limited, relegating them to the outermost margins of Syrian civil society. "It is like being buried alive," said one man.</p> <p>In an attempt to mitigate the desperation of their plight, some Kurds have begun to mobilize themselves to advocate for their recognition. Others take tremendous risks to leave Syria illegally and seek opportunities abroad. However, those caught may be deported back, imprisoned, and subjected to harsh treatment. Individuals who actively tried to change the situation for stateless Kurds have also been detained and tortured.</p> <p>In his speech on November 10, 2005, President Bashar Al-Assad of the Syrian Arab Republic said that he wants to resolve issues of nationality in the Hassakeh region. "We will solve this issue soon in an expression of the importance of national unity in Syria." But over the years, many government promises about resolving the plight of stateless Kurds have been made and broken. "Promises are made by the authorities, but in practical life there are no changes," one stateless man told Refugees International.</p> <p>While the Syrian government deserves credit for decades of assistance to hundreds of thousands of Palestinians, and now to the growing number of Iraqi refugees present on their territory due to the ongoing crisis in Iraq, it must recognize in a concrete way the rights of hundreds of thousands of individual Kurds within its own borders who have been arbitrarily denied the right to Syrian nationality. The Syrian government needs to repeal all draconian restrictions on the free expression of Kurdish cultural identity and grant citizenship to individuals who lack it.</p> <p>President Al-Assad needs to make good on his promises now. For only when the stateless Kurds in Syria have been fully nationalized and the broader issue of the Kurdish place in Syrian political, social, and economic life has been addressed can peace and security within Syria be realized.</p> <p>Refugees International recommends that:</p> <p><b><i>The Government of Syria</i></b></p> <ul style="list-style-type: none"> <li>• Take immediate and concrete steps to fulfill the promise to grant citizenship to all individuals lacking effective nationality in accordance with Article 3 of the Syrian Nationality Act and international law.</li> <li>• Repeal all laws and decrees which deny Kurdish people in Syria the right to enjoy their own culture and language.</li> <li>• Begin a program of reparations and development for Kurds who lost property and status in 1962 that is at the same time sensitive to the rights of Arab occupants.</li> </ul>
1	BURIED ALIVE: STATELESS KURDS IN SYRIA

<ul style="list-style-type: none"> <li>• Ensure every child born in Syria has the right to acquire a nationality and is not stateless.</li> <li>• Enact legislation to permit passage of nationality from mother to child.</li> <li>• Become party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Prevention of Statelessness.</li> </ul> <p><b><i>The UN High Commissioner for Refugees</i></b></p> <ul style="list-style-type: none"> <li>• Broaden its focus and operations to include stateless persons in addition to refugees as mandated.</li> <li>• Work with the Syrian government to end statelessness in the country, including affected Kurds.</li> <li>• Provide relief consistent with its agency mandate to address stateless people.</li> <li>• Identify a staff team to work actively on ending statelessness in Syria.</li> <li>• Open UNHCR branch offices in regions of the country where statelessness is most severe.</li> </ul> <p><b><i>The United States &amp; Concerned Governments</i></b></p> <ul style="list-style-type: none"> <li>• Establish a clear policy on Kurds in Syria, urging the Syrian government to resolve the statelessness issue.</li> <li>• Refuse to become party to agreements with Syria until the fundamental rights of Kurds are upheld, particularly the EU's formation of the Mediterranean Partnership with Syria.</li> <li>• Include more details on conditions faced by stateless persons in annual human rights reports.</li> <li>• Support the development of civil organizations, including ones to achieve greater communication and understanding between Syrian Arabs and Kurds.</li> </ul>	<p><b>Only when the stateless Kurds in Syria have been fully nationalized and the broader issue of the Kurdish place in Syrian political, social, and economic life has been addressed can peace and security within Syria be realized.</b></p>
<p>WWW.REFUGEEINTERNATIONAL.ORG</p>	<p>ii</p>

## EXECUTIVE SUMMARY

Every person has the right to a nationality. Yet statelessness continues to be a fundamental cause of discrimination, exploitation, and forced displacement in all regions of the world. Statelessness is a highly complex legal and often political issue with a disproportionate impact on women, children, and ethnically mixed families. It has serious humanitarian implications for those it affects, including no legal protection or the right to participate in political process, poor employment prospects and poverty, little opportunity to own property, travel restrictions, social exclusion, sexual and physical violence, and inadequate access to healthcare and education.

States have the sovereign right to determine the procedures and conditions for acquisition and termination of citizenship, but statelessness and disputed nationality can only be addressed by the very governments that regularly breach protection and citizenship norms. To date, only 57 states have become party to the 1954 Convention relating to the Status of Stateless Persons and even fewer states, just 29, are party to the 1961 Convention on the Reduction of Statelessness.

The exact number of individuals affected by statelessness is not known. Refugees International believes the low end estimate to be over 11 million. They are found among individuals from the former Soviet bloc, some of Thailand's ethnic groups, the Bhutanese in Nepal, Muslim minorities in Burma and Sri Lanka, Palestinians, Europe's Roma, the Bidoon in Kuwait, Bahrain, Saudi Arabia, and United Arab Emirates, specific cases in the Horn of Africa, ethnic minorities such as the Batwa 'Pygmy' and Banyarwanda of the Great Lakes Region of Africa, Bihari and Rohingya in Bangladesh, Kurdish populations, numbers of Arab Shiites, some Meskhetian Turks, and Zimbabweans of Indian descent or with links to Malawi and Mozambique.

The 1954 Convention Relating to the Status of Stateless Persons identifies a stateless person as someone who does not have the legal bond of nationality with any state. Unlike refugees and internally displaced people, stateless individuals generally do not benefit from the protection and assistance of governments, aid agencies, and the United Nations, despite its mandate over stateless persons. They are essentially international orphans. At present, only two staff people at the headquarters of the United Nations High Commissioner for Refugees (UNHCR) are employed to focus on this large and growing population.

In November 2004, Refugees International (RI) launched a multi-country assessment mission to take a closer look at the global problem of statelessness.

- In Bangladesh, RI representatives visited eleven of the sixty-six camps where more than 250,000 Biharis (also called stranded Pakistanis) have lived under harsh conditions for thirty-three years. Both Pakistan and Bangladesh refuse to offer them citizenship. It is a critical humanitarian situation, and no one is helping to find short or long-term solutions.

*"We are  
between the  
earth and the  
sky..."*

-A stateless Bidoon,  
United Arab  
Emirates

- In Estonia, RI learned first-hand about the labor and socio-economic challenges faced by 160,000 Russian-speaking minority residents who were left behind when Estonia entered the European Union earlier this year. Because there is minimal mixing of the populations, it is difficult for Russian-speakers to develop adequate Estonian language skills required to pass the citizenship test needed to acquire better jobs, participate in national elections, and travel abroad.
- In the United Arab Emirates, Bidoon keep a low profile and live quietly in shantytowns waiting for a solution to their problem. "We are like a boat without a port," one Bidoon told RI.

The gap between rights and reality must be closed. This report takes a look at the issue of statelessness through a humanitarian lens, provides an in depth examination of the problem in three countries, presents a global review of statelessness, and makes concrete recommendations to prevent new cases of statelessness and end the problem where it exists.

Refugees International will take these findings and its recommendations to the UN, national governments, regional bodies, non-governmental organizations, and the general public in order to raise awareness of this often purposely hidden problem, and to advocate for changes in the status quo. Ultimately the prevention and reduction of statelessness contributes not only to the promotion of human rights, an improved quality of life for affected individuals, and increased overall human security, but it also aids in the reduction of forced displacement and refugee flows.

Refugees International recommends that:

#### States

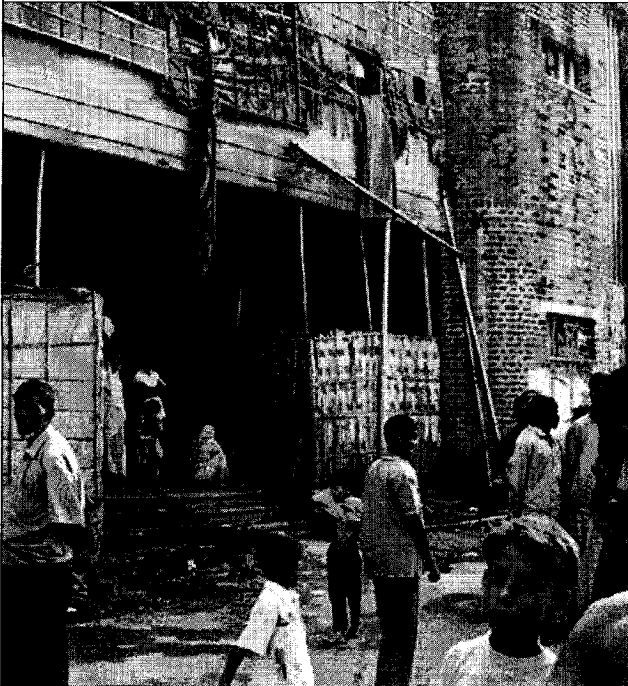
- Respect the right of all individuals to have a nationality.
- Become party and adhere to international standards to protect stateless people and reduce statelessness by facilitating acquisition of nationality.

#### UN and Non-Governmental Agencies

- Clearly define agency mandates and outline concrete operational objectives in regard to statelessness.
- Strengthen UNHCR as the lead agency in accordance with its mandate on statelessness, including establishment of a dedicated department to focus on this issue.

#### Donor Governments

- Require and evaluate protection of stateless populations.
- Provide new funding to support UN and non-governmental agency work on behalf of stateless people.

<p>“Our only crime was to side with Pakistan during its darkest hours.”</p> <p>—A.N. Khan</p>	<div data-bbox="634 499 1136 573"> <h2 style="text-align: center;">CITIZENS OF NOWHERE</h2> <h3 style="text-align: center;">THE STATELESS BIHARIS OF BANGLADESH</h3> </div> <div data-bbox="599 606 1015 634"> <h4>THE HUMAN COST OF STATELESSNESS</h4> </div> <div data-bbox="597 642 1169 917"> <p>A six-hour bus ride from Bangladesh’s capital city, Dhaka, put us in Rangpur just before 5:30 p.m., with the last rays of daylight all but gone. The population of this northwestern city includes 30,000 Urdu-speaking Bihari. Our first stop was an area called Camp Three where we conversed with the leader of the stranded Pakistanis, Mr. Alhaj Nasim Khan. In his mid-80s with thick glasses and a distinguished white beard, he sat across from us at a simple wooden table and stated, “Our only crime was to side with Pakistan during its darkest hours. Now this is how we are passing our days.”</p> </div> <div data-bbox="570 945 1203 1627">  </div>
1	CITIZENS OF NOWHERE: THE STATELESS BIHARIS OF BANGLADESH

<p>We talked with camp leaders about sanitation and hygiene concerns and learned there are only two working wells and ten latrines for the 5,000 residents of Camp Three. "There is no privacy," one person said, "especially for our women." A young man who guided us through the camp pointed out an old, covered latrine. "It made people sick," he reported.</p> <p>Housing for camp residents consisted of overcrowded cane structures. The number of families is growing and accessible land is becoming increasingly scarce, continually compounding the problem. Passing through the dark narrow alleys, we stopped to visit one house missing part of its wall, leaving the roof on the verge of collapse. It was a remnant of the ruin caused by a tornado that hit the area in September, destroying 54 homes within the camp.</p> <p>With our heads touching the ceiling of one tiny home, we were told that twelve people lived in the house, including four children. The primary breadwinner, a young man with only one hand, reported that he only made up to 90 taka (\$1.50) a day doing odd jobs, such as rickshaw pulling or working as a guard. He listed the main problems in the camp as housing, employment, and hygiene.</p> <p>Another shelter we visited was the residence of the "Camp-in-Charge." He obligingly arose from his sick bed to talk with us. Having no medicine to treat his lung ailment and no caretaker, his condition seemed bleak. Outside his doorway, we met a young leper whose fingertips were red and white from pus and blood. A few steps later, a man with a dreadfully swollen stomach and intestines appeared. We witnessed firsthand the uncountable medical needs left untreated, as there was no camp medical clinic and few individuals had the necessary funds to seek help outside the camp.</p> <p>Our visit to Camp Two echoed the problems we had already encountered. A mother of ten, with her blind son by her side, said, "Living is not the issue. Identity is the issue. Without it, how can we survive?" Her husband, suffering from diabetes, is able to find odd jobs. "Our family ate only once today," the mother added.</p>	<p><b>"Our family ate only once today." —Bihari mother</b></p>
<p>WWW.REFUGEESINTERNATIONAL.ORG</p>	<p>2</p>



	<p>At a nearby house, a woman had opened a small shop inside their eight by eight foot room to support her six children while her husband is hospitalized with liver jaundice. "If anyone else falls sick, we can't afford a doctor. It has become quite impossible to survive," she told us. "Due to poverty, we are sometimes starving."</p> <p>As we left one dark exterior walkway and entered a pitch black room, we encountered a very sick man wrapped in a tattered blanket and lying on a worn-out floor mat. As another person lit a small candle, its illumination revealed the figures of two terrified young girls in rags cowering behind the man and pressed tightly against each other. "No one is caring for them, and their father can't afford to marry them into another family." The two girls face a lifetime of borrowing and begging. Outside, the gathering crowd attracted the attention of a local security officer, and we began to wind down our visit.</p> <p><b>THE GLOBAL PROBLEM OF STATELESSNESS</b></p> <p>The 1948 Universal Declaration of Human Rights asserts that "everyone has the right to a nationality." Nevertheless, statelessness remains a reality in all regions of the world. While the exact numbers are not known, a conservative estimate suggests there are no fewer than 11 million stateless persons around the world. Stateless peoples include recognizable groups like some of Europe's Roma, numbers of Palestinians and Kurds, and groups whose plight is less known, such as people from the former Soviet bloc, some of Thailand's ethnic groups, the Bhutanese in Nepal, Muslim minorities in Burma and Sri Lanka, and ethnic minorities of the Great Lakes region of Africa including the Batwa "Pygmy" and the Banyamulenge.</p> <p>Causes of statelessness include, but are not limited to, political upheaval, targeted discrimination (often for reasons of race or ethnicity), differences in laws between countries, laws relating to marriage and birth registration, expulsion of a people from a territory, nationality based on descent (usually that of the father), abandonment, and lack of means to register children.</p> <p>Since sovereign states have the right to determine the procedures and conditions for acquisition and termination of</p>
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citizenship, statelessness and disputed nationality can only be addressed by the very governments that regularly breach norms of protection and citizenship. However to date, only 57 states are party to the 1954 Convention Relating to the Status of Stateless Persons, and even fewer, just 29 states, are party to the 1961 Convention on the Reduction of Statelessness. Given the U.S. emphasis on promoting democracy, signing the conventions would help protect rights and increase pressure on other governments to offer citizenship and voting rights to millions of people.

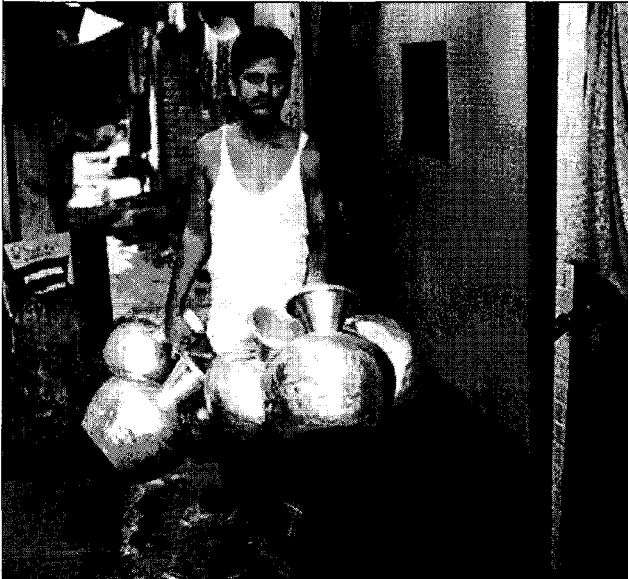
Despite its mandate and notable success in helping reduce this problem, only two staff members in the office of the UN High Commissioner for Refugees (UNHCR) are specifically employed to focus on helping the world's stateless people. "The problem is so severe that there is no region that has not faced it," reported Carol Batchelor, former Senior Legal Officer for Statelessness of the UNHCR. Stateless persons can fall into any of the agency's four reporting categories: refugees, asylum



<p>seekers, internally displaced persons and “others of concern.” Non-citizens may be identified as such by the 1954 Convention, but for political reasons they are not called as such. “And,” Ms. Batchelor adds, “That is just the tip of the iceberg.”</p> <p><b>BANGLADESH: THE PEOPLE AND THE LAND</b></p> <p>Bangladesh is one of the most densely populated and poorest nations in the world. The majority of the population is employed in the agricultural sector, yet floods and cyclones plague the country. Bangladesh has tried to diversify its economy through industrial development, but there still are an insufficient number of jobs for the burgeoning population. An estimated 35.6 percent of the population lives below the poverty line.</p> <p>The population of Bangladesh is 98 percent Bengali, with tribal groups and non-Bengali Muslims, such as the Biharis, making up the last 2 percent. The primary religion is Muslim (83 percent), followed by Hindu (16 percent); the remaining 1 percent is Buddhists, Christians, and Animists. The literacy rate is approximately 43.1 percent.</p> <p>Bangladesh seceded from West Pakistan to form an independent nation in 1971. The war for independence was bitter and bloody, and was followed by 15 years of military rule. Though democracy was restored in 1990, the political scene remains volatile, and the country is often charged with human rights violations.</p> <p><b>WHO ARE THE BIHARIS AND WHY ARE THEY FORGOTTEN?</b></p> <p>Originally from India’s Bihar State, the Urdu-speaking Biharis moved to then East Pakistan in 1947, at the time of India’s partition. When East Pakistan moved to secede and civil war broke out between East and West Pakistan in 1971, the Biharis, who considered themselves citizens of Pakistan, sided with West Pakistan. In December 1971, however, when East Pakistan became the independent state of Bangladesh, many Biharis were left behind.</p> <p>Pakistan feared a mass influx of Biharis would be costly and could potentially stir passions in an already fragmented popula-</p>	<p>Their lack of political voice further prevents any movement toward improvement in the situation.</p>
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<p><b>As families grow without having access to more land, they are forced to live in increasingly small quarters.</b></p>	<p>tion. Newly formed Bangladesh scorned the Biharis for having supported the enemy. Neither country offered citizenship or aid. While Bangladesh permitted Biharis to stay, and they received some assistance from international organizations such as the International Committee of the Red Cross in the early days, they have now lived in refugee-like camps in Bangladesh for more than three decades with little attention from the global community. Their lack of political voice further prevents any movement toward improvement in the situation. Nevertheless, some Biharis have organized, forming organizations such as the Stranded Pakistani General Repatriation Committee, and began lobbying for relocation to Pakistan. Between 1974 and 1992 some 175,000 Biharis were relocated to Pakistan.</p> <p>Two generations of Biharis now live in camps. For some members of the younger generation, Bangladesh is the only home they have ever known, and Bengali is the language they have learned. In the spring of 2003, a high court ruling in Bangladesh allowed ten Biharis to assume Bangladeshi citizenship with voting rights. The judgment stated that Urdu-speaking people, who were resident at the time of independence, as well as those born following independence and living in camps, are citizens of Bangladesh in the application of the 1972 Bangladesh Citizenship Order. However, the decision had no political support and faced possibility of government appeal.</p> <p><b>CAMP CONDITIONS</b></p> <p>Between 240,000 and 300,000 Biharis currently live in some 66 camps in Dhaka and throughout 13 other regions across the country. All camps have one thing in common—they are severely overcrowded. In Rangpur, there are several instances in which 12 or more family members sleep huddled together in a single room no larger than eight by ten feet. As families grow without having access to more land, they are forced to live in increasingly small quarters.</p> <p>In some camps, dirt floors become deep mud in the monsoon season. A widow and mother of four told Refugees International, “We cannot stay here when it rains. We have to live in the railway station.” In September, a tornado ripped through</p>
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<p>one camp. On December 4, 2004 fire ripped through another, leaving two hundred people homeless. Over the years, numerous families have been threatened with and reportedly suffered forced evictions.</p> <p>Lack of clean water, co-habitation with animals, and poor drainage and sanitation systems, contribute to a variety of medical problems including skin disease, water-borne illness, upper respiratory infections and gastro-intestinal disorders. In one camp, only two working wells supplied water to 650 families. In Mirpur's Millat Camp, there was only one latrine for 6,000 people. Few medical clinics exist, and several camps have no healthcare at all.</p> <p>The right to a basic education has become a luxury for Bihari children. The school in Saardar Bahardur Camp closed last year due to lack of funding. In Adamgee Camp, only six boys from an entire camp progressed to secondary school. Teachers go unpaid, students study in shifts, and requests to the Minister of Education for new books have been turned down. This lack of education, combined with an already impoverished economy, provides little opportunity for employment either inside or outside the camps. Those able to find employment often face discrimination and harassment.</p> <p>Poverty is widespread in Bangladesh, and the basic situation for the Biharis resembles that of the poorest citizens of the</p>	<p><b>Those able to find employment often face discrimination and harassment.</b></p>
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<p><b>A durable solution for the Biharis is now 30 years overdue.</b></p>	<p>country. Denial of citizenship, however, creates additional disadvantages for the Bihari. Having no official government recognition and identification papers, prohibits a person from holding a government job and other professions which require higher education. Lack of status also restricts the Biharis' chances to develop their own economic opportunities and prohibits access to processes that would enable them to safeguard their rights.</p> <p><b>SEEKING SOLUTIONS AND RESTORING HUMAN RIGHTS</b></p> <p>A durable solution for the Biharis is now thirty years overdue. It is the time for the governments of Bangladesh and Pakistan, the UN, regional and donor governments, non-governmental agencies, and concerned individuals to identify and implement permanent solutions for this protracted problem that has prevented hundreds of thousands of individuals from improving their lives.</p> 
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<p>After the November 2004 visit to Bangladesh, Refugees International had face-to-face meetings with diplomatic representatives of the Pakistani and Bangladeshi governments to urge them to work with each other and UNHCR to offer the possibility of resettlement and citizenship.</p> <p>At the same time, RI called on Bangladesh to work with international organizations and non-governmental organizations to ensure that each camp has enough basic amenities, including water, latrines, schools, and clinics, to accommodate its population.</p> <p>RI has worked very closely with UNHCR, including direct dialogue with officers of the Asia Bureau, at the headquarters in Geneva, and with field offices. This effort led to a visit to the Bihari camps by a senior representative from the Department of International Protection and discussion of a UN response. At the UNHCR office in Dhaka, a special protection officer is now in place. Also, RI's meeting with representatives from the Bureau of Democracy, Human Rights, and Labor, led to more substantial inclusion of the Bihari case in the 2005 Annual U.S. Human Rights Report.</p> <p>In February 2005, RI released "Lives on Hold: The Human Cost of Statelessness" (<a href="http://www.refugeesinternational.org/content/publication/detail/5051/">http://www.refugeesinternational.org/content/publication/detail/5051/</a>), which included a focus on the Bihari. Afterwards, RI met with staff members of the House International Relations Committee (HIRC), the Judiciary Committee, and of the Congressional Refugee and Human Rights Caucuses, which prompted HIRC staff to raise the issue with State briefers for the Human Rights Report and to indicate Congress wanted more action by the Administration on this issue. This effort also led the Human Rights Caucus to hold the first-ever briefing on statelessness. Targeted visits with the Congressional Bangladesh Caucus led to agreement to raise RI's concerns during the Washington visit of the U.S. Ambassador to Bangladesh. We also addressed the issue with the Pakistan Caucus.</p> <p>In July 2005, Refugees International held a briefing for the honorable members of the 84th Session of the Human Rights Committee on the issue of statelessness as it relates to treaty</p>	<p><b>The benefits of ending statelessness for the population are clear.</b></p>
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<p><b>For some Biharis, the preferred solution may be relocation to Pakistan.</b></p>	<p>bodies, particularly the International Covenant on Civil and Political Rights (ICCPR). Similarly, the issue was raised before the Human Dimension meeting of the Office of Security and Cooperation in Europe in September.</p> <p>RI will continue to monitor the situation of the Biharis and track movement toward resolution of their situation. There remains much to be done on behalf of this population, and the benefits of ending statelessness for the population are clear.</p> <p>Granting citizenship to Biharis in Bangladesh, and facilitating family reunification, relocation, and naturalization for those longing to live in Pakistan would enable an estimated 300,000 individuals to regain their lives and avail themselves of the fundamental right to a nationality and its concomitant rights. They will be able to participate in the political processes and have their own voice. Granting citizenship to the Biharis by Pakistan and Bangladesh will restore their rights and their dignity.</p> <p><b>REFUGEES INTERNATIONAL'S RECOMMENDATIONS</b></p> <p>Refugees International recommends that:</p> <p><b><i>The Governments of Pakistan and Bangladesh</i></b></p> <ul style="list-style-type: none"> <li>• Respect the right of all people to have a nationality and take immediate concrete steps to reach this end for all Biharis who want it. For some, the preferred solution may be relocation to Pakistan; for others it may be affirmation of citizenship in Bangladesh. For vulnerable persons resettlement to third countries may be the best option.</li> <li>• Collaborate with the UN, and local and international NGOs, to ensure that each camp has enough basic amenities, including water, latrines, schools, and medical clinics, to accommodate its population in the short-term and evaluate if current settlements should be rehabilitated or whether residents should be relocated in the future.</li> <li>• Accede to and adhere to principles of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.</li> </ul>
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<p><b><i>The International Community, led by UNHCR</i></b></p> <ul style="list-style-type: none"> <li>• Take concrete and measurable steps to resolve the situation of the Biharis by ceasing to wait for the external survey and move forward with agency plans for action.</li> <li>• Facilitate tripartite discussions to resolve the protracted plight of the Biharis.</li> <li>• Develop and implement programs to provide temporary humanitarian assistance and relief for Biharis until a durable solution is found for every stateless individual who wishes it.</li> </ul> <p><b><i>Donor Governments</i></b></p> <ul style="list-style-type: none"> <li>• Demand protection for stateless populations by state actors and the UN.</li> <li>• Develop foreign policies to prevent the development of and reduce statelessness.</li> <li>• Provide additional funding as necessary to support viable programs to prevent loss of nationality, provide assistance, and resolve statelessness.</li> </ul>	<p><b>For others, it may be affirmation of citizenship in Bangladesh.</b></p>
	
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Ms. WATSON. I am happy to see, and I think I see him, that one of our witnesses today is former Assistant Secretary of Defense Ken Bacon from Refugees International, who will likely, I hope, include some information on the plight of these stateless people in his testimony, and I want to thank Mr. Bacon for taking time out to join us today, as well as thanks to my colleague, Mr. Payne, for ensuring that we could have him here today speaking on our panel. We appreciate that.

Secretary Sauerbrey, in January, I wrote to you, upon your confirmation as assistant secretary, to inquire about your strategy for addressing the plight of these stateless persons. In that letter, I asked you to consider designating a full-time point person on statelessness within your bureaucracy. Furthermore, I asked that the Bureau consider providing new resources to both the UN and non-governmental agency work on behalf of stateless persons. This letter would have arrived just as you were moving into your new offices in January, so I can understand why there might be some delay.

My staff contacted your office in late February and faxed over another copy, and I do know that you have a full plate in your new position, but I hope you could maybe use some of your time today to respond to the issues I raised in that letter, and I have another copy here if you did not receive it, and you need one.

So I am looking forward to hearing your testimony, and, again, I want to thank our Chairman, and I yield back the remainder of my time.

Mr. SMITH OF NEW JERSEY. Thank you very much.

Thank you, and let me just now introduce our distinguished panel, beginning with Secretary Ellen Sauerbrey, who became Assistant Secretary of State for Population, Refugees, and Migration in January 2006. Secretary Sauerbrey previously served as U.S. Representative to the UN Commission on the Status of Women. Before that, she served in the Maryland House of Delegates and was the 1994 and 1998 Republican nominee for governor of Maryland. A former teacher, she was elected to represent her northern Maryland district in the Maryland legislature from 1978 to 1994 and served as minority leader from 1986 to 1994.

We will then hear from Ms. Rachel Brand, who was confirmed by the U.S. Senate as the Assistant Attorney General for Legal Policy at the U.S. Department of Justice in July 2005. Previously, Ms. Brand served as principal Deputy Assistant Attorney General in the Office of Legal Policy. Ms. Brand also clerked for U.S. Supreme Court Justice Anthony Kennedy and Massachusetts Supreme Court Justice Charles Fried.

We will then hear from Secretary Paul Rosenzweig, who serves as Counselor to the Assistant Secretary for the Policy Directorate in the Department of Homeland Security. He also currently serves as Acting Assistant Secretary for Policy Development. Prior to joining the Department, he served as senior legal research fellow at the Heritage Foundation and co-authored the book, *Winning the Long War: Lessons from the Cold War for Defeating Terrorism and Preserving Freedom*.

Secretary Sauerbrey, if you could begin.

**STATEMENT OF THE HONORABLE ELLEN R. SAUERBREY, ASSISTANT SECRETARY, BUREAU OF POPULATION, REFUGEES AND MIGRATION, U.S. DEPARTMENT OF STATE**

Ms. SAUERBREY. Thank you, Mr. Chairman. It is an honor to appear before you today and have the opportunity to discuss the U.S. refugee program and some of the challenges that we face. I know your primary focus is on a lot of the challenges in admissions, but also we would like to be able to talk about some other aspects of the Bureau's work.

Since I took office in January, I have been working very hard to get a grasp on the issues. I have had over 100 meetings with NGOs, representatives of state, local, and foreign governments, international organizations. I visited a resettlement agency in Rhode Island. I have met with UN and nongovernmental agencies in New York and Geneva. I attended a senior migration leadership seminar in Florida, and I visited refugee camps in Kenya and Uganda and also the U.S. Migrant Center in Guantanamo.

My trip to refugee camps in Kenya and Uganda in March gave me an invaluable opportunity to see some aspect of nearly everything that our Bureau does involving both refugee protection, assistance, and admissions to the United States, and I was able to meet with and travel with all of our international partners—UNHCR, ICRC, IOM, the World Food Program—as well as the NGOs that we are funding in these two countries.

Some of the challenges that we face in our refugee program, I would like to focus on. For the 5 years prior to September 11, the program had averaged 75,000 admissions annually, and that number dropped to 27,000 in Fiscal Year 2002 and 28,000 in Fiscal Year 2003 as certainly necessary security requirements were put into place after 9/11. We have struggled through extraordinarily difficult years, but due to a lot of hard work by PRM, strengthening the admissions office, and implementing the Worldwide Refugee Admissions Processing System, known as WRAPS, the program rebounded, and 53,000 to 54,000 refugees were admitted in both 2004 and 2005.

We also recognize the efforts of our principal United States Government partners—U.S. Citizenship and Immigration Services at DHS and the Office of Refugee Resettlement at HHS—as well as their NGO and IO partners here and abroad who helped to make this recovery possible.

In addition to the focus on improving the security-related components of the program, considerable attention has been given to expanding its reach to those most in need. We receive regular inputs from NGOs and other partners on possible new caseloads. We have redoubled our efforts to enhance UNHCR's capacity to identify and refer refugees for whom resettlement is the appropriate solution. We expect at least 25,000 referrals from UNHCR this year for refugees in Africa and Asia alone.

It is the Administration's view that important national security interests and counterterrorism efforts are not incompatible with our nation's historic role as the world's leader in refugee resettlement. While we must keep out terrorists, we can continue to provide safe haven to legitimate refugees. Due to national security imperatives, there have been recent changes to the law as well as to

the process, and we continue to work on ways to harmonize these two important policy interests.

It was an important step to have moved forward on the ethnic Karen Burmese refugees in Thailand, and we are continuing to look at further steps necessary to ensure the harmonization of national security interests with the refugee program.

The precarious situation in Nepal is also affecting United States refugee admissions. We had hoped to have initiated by now a program for certain Tibetans as well as the sizeable population of Bhutanese who have been in camps there for 15 years. We are closely watching developments in Nepal, and we hope to be able to report progress on this very important humanitarian initiative very soon.

The Administration remains deeply concerned about the hardships suffered by the North Korean people and the plight of those North Koreans who have reached this country in search of asylum. Consistent with the intent of the North Korean Human Rights Act, we have been working with other governments and refugee organizations to find ways to effectively deal with cases of individual North Korean asylum seekers as they arise. However, as we highlighted in our October 2005 report to Congress on the subject, many host governments are reluctant to allow us to process cases of North Korean asylum seekers on their territory.

These countries, however, facilitate the quiet transit of North Korean refugees to South Korea. You would be interested to know that nearly 1,400 made it in 2005, and 449 so far in 2006. But these countries fear that United States Government involvement could disrupt this mechanism by generating publicity that is unwanted and complicating bilateral relations for them. Despite these concerns, we are pleased to note that recently we were able to successfully resettle six North Koreans in the United States.

In order to protect the integrity of the program, and because we do not normally comment on refugees, I cannot publicly provide further details about where they came from and where they are being resettled, but we would be more than happy to provide a classified briefing to share more information about our efforts in this area.

Mr. Chairman, we very much value and appreciate your leadership on refugee issues, and I look forward to working closely with you during my tenure as Assistant Secretary. I believe American taxpayers can and should be very proud about the great work that our Government does for people in need worldwide, and one of my missions is to ensure that this awareness is increased. I would be happy to take your questions.

[The prepared statement of Ms. Sauerbrey follows:]

PREPARED STATEMENT OF THE HONORABLE ELLEN R. SAUERBREY, ASSISTANT SECRETARY, BUREAU OF POPULATION, REFUGEES AND MIGRATION, U.S. DEPARTMENT OF STATE

Mr. Chairman:

It is an honor to appear before you today to discuss the United States refugee program and some of the challenges facing it. As you may be aware, this is my first formal appearance before the Congress since being sworn in as the Department of State's Assistant Secretary in the Bureau of Population, Refugees, and Migration three and one half short—but action packed—months ago. I understand that your

primary focus today will be issues related to refugee admissions but hope that we will also have the opportunity to touch on other aspects of the Bureau's work.

Since receiving the President's call late last summer, I have devoted myself to learning about the myriad complex issues the United States and other concerned governments and international organizations grapple with on a daily basis in striving to assist some of the world's most vulnerable people. With the assistance of the dedicated professionals in PRM, I entered the job well-briefed on these issues and aware of the magnitude of the task that lay ahead. In addition to establishing contacts within the government, since taking office I have had over 100 meetings with NGOs, representatives of state, local and foreign governments and international organizations. I have visited with a resettlement agency in Rhode Island, met with UN and non-governmental agencies in New York and Geneva, attended a senior migration leadership seminar in Florida, and visited refugee camps in Kenya and Uganda as well as the Migrant Center in Guantanamo Bay, Cuba.

My trip to refugee camps in Kenya and Uganda in March gave me an invaluable opportunity to see some aspect of nearly every activity in which the Bureau is involved in terms of refugee protection/assistance and admissions to the United States. I was able to meet and travel with all of our international partners—UNHCR, ICRC, IOM, and WFP—as well as the NGOs that we are funding in the two countries. I talked with refugees, particularly women, to hear their views on camp concerns and plans for return to Sudan. I heard the stories of women who were not yet convinced that it was safe to go home to southern Sudan; I heard the songs of young girls who had been exploited for their labor and/or for sex. I was able to see first hand the challenges of balancing our admissions and assistance programs and of balancing funding for life-sustaining assistance for refugees and conflict victims vs. investing in returnee reintegration where that is possible. In particular, I was a bit chagrined to see where education for refugees—one of my passions—could actually undercut the momentum for return, or even act as a magnet for new arrivals.

In Providence, I met staff dedicated to unraveling the myriad complexities facing newcomers each day. I ate lunch in a restaurant owned by a family of Cambodian refugees whose daughter is now in the National Guard. I visited a Liberian refugee woman longing for her children who remain in Africa, and met the owner of a small business who could not say enough about the work ethic of his refugee employees. As a result of all of this invaluable interaction and first-hand exposure to the problems of refugees and displaced persons, I can report to you that I am deeply impressed by the magnitude and complexity of PRM's work. Let me highlight some of the challenges that we face.

On September 11, 2001, I was a private American citizen who, like everyone, was overwhelmed by the magnitude of this violent attack on our country and concerned that our national security be restored quickly. While I read about the struggles of various agencies, I was unaware of the impact these heinous events had had on immigration to the United States.

One small but important component of our overall immigration program—refugee admissions—involves several federal agencies but is coordinate and managed by PRM. For the five years prior to September 11, the program had averaged 75,000 admissions annually. That number dropped to 27,000 in FY 2002 and 28,000 in FY 2003 as new but necessary security requirements were put into place after 9-11. After struggling through two extraordinarily difficult years, through much hard work by PRM, the expansion of the addition of a few new positions in the Admissions Office and implementation of the Worldwide Refugee Admissions Processing System known as "WRAPS", the program rebounded and 53-54,000 refugees were admitted in both FY 2004 and 2005. We also must recognize the efforts of staff at our principal USG partners—US Citizenship and Immigration Services at DHS and the Office of Refugee Resettlement at HHS—as well as our NGO and IO partners both here and abroad who all helped make this recovery possible.

In addition to the focus on improving the Admissions program's security-related components, considerable attention has been given to expanding its reach to those most in need. We receive regular inputs from NGO and other partners on possible new caseloads—some of which have been evaluated during inter-agency visits to refugee locations—particularly in Africa. We have also redoubled our efforts to enhance UNHCR's capacity to identify and refer refugees for whom resettlement is the appropriate solution by supplementing its funding for this purpose. We expect at least 25,000 referrals from UNHCR this year for refugees in Africa and Asia alone.

It is the Administration's view that important national security interests and counter-terrorism efforts are not incompatible with our nation's historic role as the world's leader in refugee resettlement. While we must keep out terrorists, we can continue to provide safe haven to legitimate refugees. Due to national security im-

peratives, there have been recent changes to the law as well as to the process and we continue to work on ways to harmonize these two important policy interests. It was an important step to have moved forward on the ethnic Karen Burmese refugees in Thailand, and we are continuing to look at further steps necessary to ensuring the harmonization of national security interests with the refugee program.

The precarious situation in Nepal is also affecting U.S. refugee admissions. We had hoped to have initiated by now a program for certain Tibetans as well as the sizeable population of Bhutanese who have been in camps there for fifteen years. We are watching developments in Nepal very closely and hope to be able to report progress on this important humanitarian initiative very soon.

The Administration remains deeply concerned about the hardships suffered by the North Korean people and the plight of those North Koreans who have fled their country in search of asylum. We have been working with other governments and refugee organizations to find ways to effectively deal with cases of individual North Korean asylum seekers as they arise. Consistent with the intent of the North Korean Human Rights Act, I am pleased to report that we recently have resettled some North Korean refugees in the U.S. However, as we highlighted in our October 2005 Report to Congress on the subject, many host governments are reluctant to allow us to process cases of North Korean asylum seekers on their territory. These countries facilitate the quiet transit of North Korean refugees to South Korea (nearly 1,400 in 2005; 449 so far in 2006), but they fear that USG involvement could disrupt this mechanism by generating unwanted publicity and complicating bilateral relations. Despite these concerns we are pleased to note that recently we were able to successfully resettle six North Koreans in the United States. In order to protect the integrity of this program, and because we do not normally comment on refugees, I cannot provide further details about where they came from and where they are being resettled. We would be happy to provide a classified briefing to share more information about our efforts in this area.

Mr. Chairman, we very much value and appreciate your leadership on refugee issues and I look forward to working closely with you during my tenure as Assistant Secretary. While we are focusing on Admissions issues today, as you know, there are many other aspects of this vital humanitarian undertaking that deserve attention. I know that the American taxpayers would be proud to learn about the great work that our government does for people in need worldwide and I plan to spare no effort in expanding their awareness. I would be happy to take your questions.

Mr. SMITH OF NEW JERSEY. Thank you very much, Madam Secretary. Ms. Brand?

**STATEMENT OF MS. RACHEL BRAND, ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF LEGAL POLICY, U.S. DEPARTMENT OF JUSTICE**

Ms. BRAND. Thank you, Chairman Smith, Ranking Member Payne, and Members of the Subcommittee. I appreciate the opportunity to be here to testify today on behalf of the Department of Justice.

I have provided the Subcommittee with written testimony that goes into more detail on the issue of material support to terrorist organizations as it relates to the admission of refugees and also on the issue of training under the International Religious Freedom Act. I am going to focus now in my oral statement more on the material support issue.

The Attorney General has made clear that the first priority of the Department of Justice is protecting the American people from the threat of terrorism. At the same time, we strongly support continuing the great American tradition of serving as a safe haven for refugees from all around the world. These two goals do not have to be contradictory, and we are committed to ensuring that neither one of them is given short shrift.

The Department's counterterrorism efforts are, and must be, proactive. It is not enough to apprehend terrorists after they attack. We at the Department of Justice and throughout the govern-

ment have an obligation to the American people to work to thwart terrorists' plans before they can be carried out. So, in addition to prosecuting those who commit acts of terrorism or those who plan acts of terrorism, we must also prosecute those who provide material support to terrorists.

We know from experience that terrorists need infrastructure to operate. They need to raise funds, maintain bank accounts, transfer money, train personnel, communicate with each other, and procure equipment. The people who perform these functions may not be committing terrorist acts themselves, but the terrorists could not operate without them. The material support statutes are designed to shut down the flow of resources to terrorists and to terrorist organizations, and these statutes are critical to our overall counterterrorism strategy. Just as after-the-fact remedies are not sufficient in the criminal context, they are not sufficient in the immigration context either.

The legislative structure for admitting aliens to the United States has historically been preventive. These statutes serve a homeland security purpose by preventing the admission to the United States of aliens who pose a security risk to our country, even if their activities are not criminal under the narrower definitions in the criminal code and not prosecutable under the harder-to-prove burden of proof in the criminal context. Any actions we take with regard to admission of refugees, therefore, must not conflict with or undermine our counterterrorism strategy either by admitting persons who pose a security threat to this country, by complicating positions that the government takes in criminal litigation, or by sending inconsistent messages to the world about our policy against acts of terror. Having said that, as I mentioned previously, national security interests and counterterrorism efforts are not incompatible with the United States' tradition of welcoming immigrants and refugees.

The United States is, and always has been, a compassionate nation. Therefore, we continue to look at further steps that are necessary to ensure the harmonization of our national security interests and our obligation to protect refugees. Thank you, and I would be happy to take your questions.

[The prepared statement of Ms. Brand follows:]

PREPARED STATEMENT OF MS. RACHEL BRAND, ASSISTANT ATTORNEY GENERAL FOR  
THE OFFICE OF LEGAL POLICY, U.S. DEPARTMENT OF JUSTICE

Dear Chairman Smith, Ranking Member Payne, and members of the Subcommittee:

Thank you for inviting me to testify on the subject of the admission of refugees who have provided material support to terrorist organizations as defined in the Immigration and Nationality Act ("INA") and on the implementation of the training provisions of the International Religious Freedom Act of 1998. In major part, my testimony will address the material support issue, although I will briefly discuss the training implementation at the end of my remarks. As an initial matter, let me put the question of admission of refugees who have provided material support under the INA in context. Attorney General Gonzales has stated on many occasions that the fight against terrorism is the number one priority of the Department of Justice. Congress has contributed greatly to our successes, first with the enactment of, and then with the recent reauthorization of, the USA PATRIOT Act.

The Department's counter-terrorism efforts are proactive. Thus, in addition to prosecuting those who commit acts of terrorism or plan terrorist attacks, the Department prosecutes those who provide material support to terrorists. We know from experience that terrorists need an infrastructure to operate. They need to raise

funds, maintain bank accounts and transfer money, communicate with each other, obtain travel documents, train personnel, and procure equipment. The people who perform these functions may not commit terrorist acts themselves, but the front-line terrorists could not operate without them. The material support statutes in the criminal and immigration contexts are designed to reach these individuals and shut down the terrorist infrastructure. Our fight against material support for terrorism is thus part and parcel of our overall counterterrorism strategy.

With this in mind, we can more fully appreciate the interests at stake in considering the admission of refugees who have provided material support to a terrorist organization or an individual that has engaged in terrorist activity as defined in the INA. The United States is, of course, a compassionate nation. We are a nation of immigrants and a nation of refugees. In fact, I understand that the United States currently admits far more refugees each year than any other country. Having said that, we are also engaged in a long war against terrorism. Any actions we take with regard to the admission of refugees must not conflict with or undermine our counter-terrorism strategy-by admitting persons who pose a security threat to this country, by complicating positions the government takes in litigation, or by sending inconsistent messages to the world about our policy toward acts of terror. I do not mean to diminish the importance of admitting bone fide refugees into the United States. Rather, my goal is to explain the full scope of considerations at stake.

Just as we have a proactive counter-terrorism strategy, the existing legislative scheme for admissions is, and historically has been, preventive-that is, designed to prevent undesirable aliens from entering the United States. Congress strengthened that scheme in the USA PATRIOT and REAL ID Acts, with objective standards and a presumption against the admission of aliens involved with terrorist organizations or individuals engaged in terrorist activities. As you are aware, the INA now contains broad definitions of some relevant terms, particularly "terrorist activity," "engaged in terrorist activity" (which includes provision of material support) and "organization [that has engaged in terrorist activity]".

The definitions are broad, however, for good reasons. They can be used for homeland security and immigration litigation purposes to prevent aliens who present risks to the United States or its citizens from entering or staying in the United States even if their activities are not criminal under the narrower definitions in the criminal code and not prosecutable under the harder-to-meet criminal burden of proof. They provide alternative courses of action positions for government authorities to protect U.S. citizens' safety in cases where the after-the-fact remedy of criminal prosecution is not sufficient.

We recognize that the breadth of these provisions may in some instances bar admission of individuals and groups who do not present such risks and to whom the United States is sympathetic. Congress addressed these concerns to some extent by providing the Secretaries of State and Homeland Security the authority to exercise their sole and unreviewable discretion, on a case-by-case basis, that the provision barring persons who have provided material support to terrorist organizations, as defined in the INA, does not apply to a particular alien. Exercising this authority would permit that alien to enter the United States so long as he met all other requirements for admission.

The law also requires that the relevant Secretary must consult with the other Secretary and the Attorney General. This scheme allows for the broadest consideration of all factors relevant to the case-the foreign policy considerations, the counter-terrorist strategy considerations, the immigration considerations, and the litigation risks. It properly includes the Department of State, the Department of Homeland Security, and the Department of Justice, each of which has an important, and different role, in protecting national security, promoting foreign policy, and implementing immigration law and refugee policy.

As you are aware, last week the Secretary of State did exercise her authority under the statute, after consultation with the Attorney General and Secretary of Homeland Security, to allow for admission of certain Karen refugees from the Tham Hin camp in Thailand, so long as they meet all other requirements for admission. Through the interagency process, the Attorney General was satisfied that the Karen National Union did not pose a threat to the United States and that exercising the statutory authority on the behalf of certain refugee applicants who provided material support to the KNU would not unduly compromise other U.S. government interests.

In sum, it is the Administration's view that important national security interests and counter-terrorism efforts are not incompatible with our nation's historic role as the world's leader in refugee resettlement. While we must keep out terrorists, we can continue to provide safe haven to legitimate refugees. Due to national security imperatives, there have been recent changes to the law as well as to the process



and we continue to work on ways to harmonize these two important policy interests. It was an important step to have moved forward on the ethnic Karen Burmese refugees in Thailand, and we are continuing to look at further steps necessary to ensuring the harmonization of national security interests with the refugee program.

With regard to the training required by International Religious Freedom Act of 1998 (IRFA), the Department is pleased to report that they have been fully implemented. Since enactment of IWA, the Executive Office for Immigration Review has completed the required training on religious persecution in accordance with the Act. For example, at this year's upcoming Immigration Judge training conference, the panel on religious freedom will include the Director for International Refugee Issues and the Deputy Director for Policy from the United States Commission on International Religious Freedom and a representative from the Office of International Religious Freedom from the State Department. A similar training was held in October 2005 for the Board of Immigration Appeals. Additionally, all staff is kept up to date on current asylum and refugee law by various means including coursework for incoming Immigration Judges, internet library updates, and relevant case law summaries.

In addition to the statutorily required training of Immigration Judges, the Civil Division's Office of Immigration Litigation (OIL) provides training of government personnel through conferences and seminars on immigration law that routinely address the statutory and regulatory provisions that govern asylum and refugee status. Last month, for example, at OIL'S Tenth Annual Immigration Litigation Conference, the program including presentations by the staff of the United States Commission on International Religious Freedom. Such training is available to all government personnel, including the staff and adjudicators of the Executive Office for Immigration Review and the Department of Homeland Security. OIL also provides training through websites, monthly bulletins, and case-specific counseling.

Mr. Chairman, that concludes my prepared statement. I would be pleased to take the Subcommittee members' questions at this time.

Mr. SMITH OF NEW JERSEY. Thank you very much. Mr. Rosenzweig?

**STATEMENT OF MR. PAUL ROSENZWEIG, ACTING ASSISTANT SECRETARY FOR POLICY DEVELOPMENT, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. ROSENZWEIG. Chairman Smith, Congressman Payne, Members of the Subcommittee, first, let me thank you for the opportunity to appear before you today to examine current issues related to the United States' protection and resettlement of refugees. I very much appreciate your attention to this important issue, and I want to assure you that the Department of Homeland Security is firmly committed to fulfilling its mission of providing protection to deserving refugees while also safeguarding our nation's security. Let me turn to some of the topics you have asked me to address.

The North Korean Human Rights Act of 2004 requires the United States Government to facilitate the filing of applications for refugee resettlement by North Korean citizens in need of protection abroad. DHS, through its component agency, the U.S. Citizenship and Immigration Services, interviews North Korean refugee applicants granted access to the U.S. Refugee Admissions Program by the Department of State and adjudicates their eligibility for resettlement in the United States. We will begin that process for the recent refugees in the near future.

In addition, the Asylum Division has fully implemented the asylum-related provisions of the act by issuing clarifying guidance to all of its asylum officers that they shall not automatically treat a North Korean national as also being a national of South Korea and by making corresponding changes in our training courses.

The International Religious Freedom of Act of 1998 mandates, as you said, Chairman, specialized training for refugee adjudicators, asylum officers, and any immigration officer working in the expedited removal context. With the creation of the Refugee Corps in the fall of 2005, USCIS has expanded and approved its previous training programs and developed a 3-week, refugee officer training course. During this course, students receive specialized instruction on religious persecution issues. The 5-week, asylum officer training course has also been expanded to incorporate information about the IRFA and specialized training on religious persecution issues, and continuing education on religious persecution is carried out on an as-needed basis at the local asylum offices during their weekly, 4-hour training sessions.

The U.S. Customs and Border Protection has also developed specialized training to ensure that all CBP officers in the expedited removal process understand the need for sensitivity in handling cases of individuals who claim a fear of persecution, including religious-based persecution. With the expansion of expedited removal between ports of entry, CBP developed specialized training for Border Patrol agents that provides an overview of the IRFA.

Additionally, in response to the recommendation of the U.S. Commission on International Religious Freedom in its report on asylum seekers and the credible fear process, the Department's Office of Civil Rights and Civil Liberties is developing a basic training program for immigration officers who interact with detained asylum seekers in expedited removal.

The IRFA also created a new ground for inadmissibility for foreign government officials who have committed particularly severe violations of religious freedom. Implementation of this authority requires close coordination between the Department and the Department of State and is most often invoked by consular officers considering visa applications. In such cases, DHS enters the necessary information into its look-out system.

The creation in 2003 of the Enforcement Human Rights Violators and Public Safety Unit in our Immigration and Customs Enforcement component dedicates resources to preventing human rights abusers, including those who have committed violations of religious freedom, from finding safe haven in the United States.

In the context of maritime migration, one often hears about the "wet foot/dry foot" policy. This is not a policy, per se, but rather a shorthand description of the jurisdictional reach of the Immigration and Nationality Act, the INA. Migrants who make landfall in the United States, regardless of nationality, are eligible to seek asylum and other immigration benefits that migrants who remain offshore may not seek. As a matter of policy, the United States Government affords migrants interdicted at sea an opportunity to seek and receive protection from persecution or torture.

The "wet foot/dry foot" distinction does not flow from the Cuban Adjustment Act or the so-called Cuban Migration Accords. The act and the accords merely set forth the immigration law consequences of a feet wet or feet dry determination. The Adjustment Act itself is what allows Cubans to apply for lawful permanent residence 1 year after being admitted or paroled, and the Migration Accords fa-

cilitate lawful migration from Cuba and repatriation of Cuban migrants intercepted at sea.

Aliens who provide material support to individuals or organizations that engage in terrorist activity are inadmissible to the United States. The INA defines terrorist activity quite broadly, and the definition of “terrorist organization” refers not only to officially designated, organized groups but also to one or more individuals who engaged in terrorist activity. The INA contains a provision under which the Secretary of Homeland Security or the Secretary of State, acting in consultation with each other and with the Attorney General, may determine that the terrorism inapplicability provision does not apply in certain cases.

Extensive interagency consultation recently culminated in an agreement for the Secretary of State to exercise her discretionary authority to not apply the material support inadmissibility provisions to certain Burmese Karen refugees of the Tham Hin camp in Thailand who provided material support to the Karen National Union and its armed wing, the Karen National Liberation Army. Both groups qualify as terrorist organizations under the expanded inadmissibility provisions of the INA. These refugees have, however, been identified as a population of special humanitarian concern to the United States, and the decision to exercise the material support inapplicability provision is based upon our collective assessment that this exercise of discretion serves U.S. foreign policy interests and will not compromise our national security.

I agree with Secretary Sauerbrey and Assistant Attorney General Brand that this was an important step to move forward on the ethnic Karen Burmese refugees in Thailand, and we are continuing to look at further steps necessary to ensure that we rationalize and harmonize our national security interests with our refugee program.

I thank you for the opportunity to speak with you today, and I look forward to answering your questions.

[The prepared statement of Mr. Rosenzweig follows:]

PREPARED STATEMENT OF MR. PAUL ROSENZWEIG, ACTING ASSISTANT SECRETARY  
FOR POLICY DEVELOPMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Chairman Smith, Ranking Member Payne and Members of the Subcommittee on Africa, Global Human Rights and International Operations: I would like to thank you for the opportunity to appear before you today as you examine current issues related to the United States’ protection and settlement of refugees. I appreciate the Subcommittee’s attention to this important issue, and I would like to assure Members of the Subcommittee that the Department of Homeland Security (DHS) is steadfastly committed to fulfilling its mission of providing protection to deserving refugees while safeguarding our Nation’s security.

I now would like to turn to the specific issues that the Subcommittee listed in its invitation for this hearing.

IMPLEMENTATION OF THE REFUGEE PROVISIONS OF THE NORTH KOREAN HUMAN RIGHTS  
ACT OF 2004

The North Korean Human Rights Act of 2004 requires the U.S. Government to facilitate the filing of applications for refugee resettlement by North Korean citizens in need of protection abroad. DHS, through its component agency, U.S. Citizenship and Immigration Services (USCIS), plays an important role in adjudicating eligibility for refugee resettlement. DHS interviews North Korean refugee applicants granted access to the United States Refugee Admissions Program by the Department of State and adjudicates these applicants’ eligibility for resettlement in the United States.

In addition, the USCIS Asylum Division fully implemented the asylum-related provisions of the North Korean Human Rights Act in October 2004, the same month the legislation became effective. In accordance with Section 302 of the Act, which provides that asylum applicants from North Korea are not to be rendered ineligible for asylum in the United States on account of “any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea,” (Section 302(a)), the Asylum Division issued clarifying guidance that Asylum Officers shall not automatically treat a national of North Korea as also being a national of South Korea. In addition, in accordance with Section 305 of the Act, which requires DHS to report annually for the next five years “the number of aliens who are nationals or citizens of North Korea who applied for political asylum and the number who were granted political asylum,” the Asylum Division established a new protocol for entering nationality and country codes into its case management system to clearly differentiate between North and South Korean citizens. The Asylum Division has also made corresponding changes to its Asylum Officer Basic Training Course.

#### IMPLEMENTATION OF THE TRAINING PROVISIONS MANDATED BY THE INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998

Several sections of Title VI of the International Religious Freedom Act of 1998 (IRFA) mandate training on international religious freedom issues for various DHS officers. Specialized training is required for refugee adjudicators (section 602), asylum officers (section 603), and any immigration officers working in the expedited removal context (section 603).

##### *Training of USCIS Refugee Adjudicators*

IRFA amended Section 207 of the Immigration and Nationality Act (INA) to require that USCIS “provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 208.” The training must include “country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.”

To comply with IRFA, USCIS considered various long-term and short-term solutions for ensuring that all Immigration Officers who adjudicate refugee applications receive training equivalent to that of Asylum Officers. Asylum Officers usually receive approximately five weeks of specialized training related to U.S. asylum law, international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles. As an interim measure, selected overseas Immigration Officers attended the Asylum Officer Basic Training Course in October of 1999 and May of 2000. After careful evaluation, the Office of International Affairs determined that the differences between asylum and refugee processing were significant and that a specialized training program was needed to train personnel for refugee adjudications. This resulted in the development of the Refugee Application Adjudication Course (RAAC), first held in Vienna, Austria in July–August 2001, and repeated twice in the spring of 2002.

Most recently, with the creation of the Refugee Corps and hiring of full-time Headquarters staff dedicated to refugee adjudications in the fall of 2005, the refugee training was again expanded and improved. New refugee officers must successfully complete the Refugee Officer Training Course to conduct overseas refugee adjudications. The course consists of in-depth training on refugee law, and much of the material is drawn from the Asylum Officer Basic Training Course. This three-week training covers all grounds, including religion, on which a refugee claim may be based, and involves specialized training on international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles. During the training, students receive specialized instruction on religious persecution issues. For example, as part of the last two sessions, members of the United States Commission on International Religious Freedom (CIRF) conducted presentations on IRFA. In addition, the training encourages further discussion of religious persecution whenever possible. USCIS has updated the primary lesson plan to reflect recent guidelines issued by the Office of the United Nations High Commissioner for Refugees (UNHCR) on religious persecution claims, as well as recent developments in refugee law. More than 30 officers have completed the training to date.

In addition, USCIS provides preparatory training to volunteer officers who are embarking on short-term overseas assignments for refugee adjudications. This “circuit ride” training includes detailed information on religious topics that will be en-

countered during the overseas assignment and, like the training, encourages further discussion of religious persecution whenever possible.

#### *Training of USCIS Asylum Officers*

USCIS also provides extensive training to Asylum Officers to prepare them to perform their duties of adjudicating asylum claims. As previously noted, the training covers all grounds on which an asylum claim may be based, including religion. Asylum Officers receive approximately five weeks of specialized training related to international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles.

With the passage of IRFA, the training program expanded to incorporate information about IRFA, as well as specialized training on religious persecution issues. The lesson on religious persecution includes an overview of IRFA with a focus on the provisions relating to refugee, asylum, and consular matters, a discussion of violations of religious freedom as identified in IRFA, an examination of legal precedent regarding asylum eligibility based on religious persecution, and an overview of resources on country conditions relating to religious freedom. The lesson plan is updated regularly to include developments in policy and case law and has incorporated UNHCR's guidelines on the adjudication of religious-based protection claims issued in April 2004. Further discussion of religious persecution is included whenever relevant throughout the five-week training. Additionally, continuing education on religious persecution is carried out at the local asylum offices during their mandatory four-hour weekly training sessions. Most recently, the Asylum Division and the Office of the Chief Counsel initiated efforts to conduct updated training on IRFA and religious persecution for USCIS Asylum Officers. This collaborative effort will be piloted in the one of the field offices and will then be conducted in the other Asylum Offices.

#### *Training of Customs and Border Protection (CBP) Officers*

Section 603 of IRFA mandates training of immigration officers working in the expedited removal context concerning the nature of religious persecution abroad and the right to freedom of religion. CBP has developed standardized training, as part of its larger asylum/credible fear training, in order to comply with IRFA's guidelines.

CBP designed a comprehensive and standardized basic training course for secondary processing by inspectors. The training includes a module on "Referring Credible Fear Cases," and is presented to CBP officers at the Federal Law Enforcement Training Center who will be working on Advanced Admissibility Teams. This hour-long training, which was first presented in January 2006, has been provided to 200 CBP officers to date. This course was designed to ensure that all officers who may be involved in the expedited removal/credible fear process under INA section 235(b) understand the need for sensitivity in handling the cases of individuals who claim a fear of persecution, including persecution based on religion. The module has also been added into the curriculum a new CBP officer receives during basic training at the academy.

Prior to the expansion of expedited removal to certain aliens apprehended between ports of entry, CBP developed specialized training for Border Patrol agents on expedited removal and the credible fear process. This training was based on earlier programs developed for CBP inspectors and benefited from the lessons learned by DHS in implementing the expedited removal program at the ports of entry. The Border Patrol training explains that while expedited removal grants Border Patrol the authority to formally remove certain aliens from the United States without further hearing or review, this authority also carries with it the critical responsibility of identifying those individuals who have invoked access to protection mechanisms through an expression of fear or intention to apply for asylum and thus require a credible fear interview by an Asylum Officer. CBP relies on USCIS Asylum Officers to present to Border Patrol agents the credible fear portion of the expedited removal syllabus. Border Patrol training also provides an overview of IRFA.

Additionally, throughout the training, Border Patrol agents are taught not to attempt to evaluate the credibility or probity of the alien's claim, but are trained to take special care to ensure that every indication of fear of return is explored and recorded before proceeding. In the expedited removal context, Border Patrol agents are responsible for ensuring that anyone who indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of returning to his or her country is referred to an asylum officer. The mandatory closing questions contained on Form I-867B are designed to help the agent determine whether the alien has such a fear. If an alien asserts a fear or concern that appears unrelated to an intention to seek asylum or a fear of persecution, the agent is taught to con-

sult with an asylum officer to determine whether to refer the alien. Agents are taught to err on the side of caution and refer to the asylum officer any questionable cases.

#### ASYLUM OVERVIEW TRAINING FOR DHS IMMIGRATION OFFICERS

The Office for Civil Rights and Civil Liberties within DHS is currently developing a basic training Asylum Overview Course, which will be provided on-line or through CD-ROM to a range of immigration officers who interact with asylum seekers. This includes officers and staff in detention facilities and CBP officers and Border Patrol agents in the expedited removal context.

The training will address a recommendation of the CIRF in its Report on Asylum Seekers in Expedited Removal, issued in February 2005. The CIRF recommendation was that DHS ensure that personnel in institutions where asylum seekers are detained are given specialized training to better understand and work with a population of asylum seekers, many of whom may be psychologically vulnerable due to the conditions from which they are fleeing.

Having completed the course, DHS immigration officers will be able to: explain the U.S. Government's responsibilities to asylum seekers; identify common characteristics of asylum seekers; recognize behaviors that may be responses to persecution; and identify effective strategies to facilitate communication with asylum seekers.

The course will be designed to assist DHS personnel in carrying out their law enforcement duties in a way that is mindful of U.S. obligations toward asylum seekers.

#### INADMISSIBILITY PROVISION FOR FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM

Section 604 of IRFA created a new ground of inadmissibility applicable to foreign government officials who have committed particularly severe violations of religious freedom. The applicability of this charge was enhanced with the passage of the Intelligence Reform and Terrorism Prevention Act in December 2004. This Act eliminated the requirement that the prohibited activity must have occurred within two years of entry.

Because this inadmissibility ground applies to foreign government officials, the implementation of this authority requires close coordination between DHS and the Department of State. This authority is most often invoked at the time of consideration of a visa application by Department of State consular officials posted overseas. For example, DHS worked in conjunction with the Department of State, Office of International Religious Freedom to prevent the issuance of a visa to the Chief Minister of the State of Gujarat, India in March 2005. That individual was inadmissible under the IRFA provision because he failed to stop or prevent the deaths of 2,500 Muslims during religious riots in 2002. In cases in which there is credible evidence to suspect applicability of this ground of inadmissibility, DHS enters the information into the lookout system.

The Immigration and Customs Enforcement (ICE) Human Rights Violators and Public Safety Unit within the Office of Investigations and of the Human Rights Law Division within the ICE Office of the Principal Legal Advisor provides DHS with dedicated resources to prevent human rights abusers from finding safe haven in the United States, including those who have committed violations of religious freedom. In April, ICE held a Human Rights Conference to provide training to 130 attorneys and special agents designated nationwide to handle cases involving persecutors and human rights abusers. Discussions regarding the legal authorities available to assist in the removal of human rights abusers from the United States included an overview of the inadmissibility ground for foreign government officials who have committed particularly severe violations of religious freedom.

#### IMPLEMENTATION OF "WET FOOT/DRY FOOT" POLICY

The "wet foot / dry foot" policy describes the jurisdictional reach of certain provisions of the INA, namely provisions that define who is treated as an applicant for admission to the United States. Migrants that make landfall in the United States, regardless of nationality, are eligible to seek asylum and other immigration benefits that migrants who remain offshore may not seek. So, when people speak about changing the "wet foot / dry foot" policy, they are actually speaking about changing the way in which the U.S. government interprets and enforces the law.

In 1993, the U.S. Supreme Court held that neither the protection-related provisions of the INA nor Article 33 of the Refugee Convention apply extra-territorially. As a matter of policy, however, the US Government affords migrants interdicted at sea an opportunity to seek and receive protection from persecution or torture. If

after an interview at-sea a USCIS officer determines that an interdicted migrant has a credible fear of persecution or torture, DHS transports that migrant to its facilities in Guantanamo Bay for further screening and evaluation. If the migrant is then determined not to be at risk of harm, the migrant may be repatriated to his country of nationality. If, however, the migrant is determined to be in need of protection, he may be resettled in a third country. Migrants interdicted at sea are not brought to the United States, in keeping with the overall U.S. Government policy of preserving lives by discouraging migrant smuggling and dangerous sea travel, while encouraging safe, orderly, and legal migration.

The “wet foot / dry foot” distinction does not flow from the Cuban Adjustment Act of 1966 or the so-called Cuban Migration Accords. The Cuban Adjustment Act allows Cuban nationals who have been present in the United States for at least one year after admission or parole and who are admissible as immigrants to apply for lawful permanent residence (LPR) status. The reason Cuban migrants are not returned to their country of nationality upon arriving in the U.S.—as is the case with illegal migrants of other nationalities—is because the Castro regime will not accept their return. As a consequence, these migrants are eligible for lawful permanent resident status under the Cuban Adjustment Act.

STATUS OF PROCEDURES FOR WAIVER OF INADMISSIBILITY FOR “MATERIAL SUPPORT”  
AND THE GENERAL LEVEL OF REFUGEE FUNDING

Under Section 212(a)(3) of the INA, aliens who provide material support to individuals or organizations that engage in terrorist activity are inadmissible to the United States. The INA defines terrorist activity to include, among other things, any use of explosives, firearms, or other weapons or dangerous device with intent to endanger the safety of individuals or to cause substantial damage to property, except when done for personal monetary gain. The definition of terrorist organization refers not only to organized groups officially designated as such by the U.S. Government, but also to one or more individuals engaged in terrorist activity (so-called “Tier III” terrorist or undesignated organizations). The law provides no exception for motivation, and thus the statutory definition could include groups that are engaged in opposition to repressive regimes.

The INA does contain a discretionary exemption to the material support inadmissibility provision. Under this provision, the Secretary of Homeland Security or the Secretary of State, in consultation with each other and with the Attorney General, is empowered to make an unreviewable discretionary determination that the terrorism inadmissibility provision does not apply with respect to material support an alien has afforded to an organization or individual.

Extensive consultations among DHS and the Departments of State and Justice recently culminated in the Secretary of State exercising her discretionary authority to not apply the material support inadmissibility provision to one group of refugees identified in the President’s annual report to Congress: Burmese Karen refugees at the Tham Hin camp in Thailand who provided material support to the Karen National Union (KNU) and its armed wing, the Karen National Liberation Army (KNLA). These refugees have been identified as a population of special humanitarian concern to the United States due to the privations they have experienced during their flight from Burma and their residence at the Tham Hin camp. The decision to exercise the material support inapplicability provision is based on the collective assessment that this exercise of discretion serves the foreign policy interests of the United States and that the admission of these refugees will not compromise our national security.

Before any applicant qualifies for the material support inapplicability provision being exercised by the Secretary of State, DHS adjudicators must be satisfied that the applicant is otherwise eligible for refugee resettlement and does not represent a danger to the security of the United States. In light of this development, we anticipate that members of DHS’ Refugee Corps will travel to Thailand within the next several weeks to begin conducting interviews with refugee candidates. In cooperation with the Department of State, USCIS, which is directly responsible for refugee processing, is actively making the necessary preparations for this undertaking, including both logistical arrangements on the ground in Thailand and provision of appropriate training to its refugee officers.

It is the Administration’s view that important national security interests and counter-terrorism efforts are not incompatible with our nation’s historic role as the world’s leader in refugee resettlement. While we must keep out terrorists, we can continue to provide safe haven to legitimate refugees. Due to national security imperatives, there have been recent changes to the law as well as to the process and we continue to work on ways to harmonize these two important policy interests. It

was an important step to have moved forward on the ethnic Karen Burmese refugees in Thailand, and we are continuing to look at further steps necessary to ensuring the harmonization of national security interests with the refugee program.

#### CONCLUSION

I thank Members of the Subcommittee for the opportunity to address them today on these important issues, and I stand ready to answer any questions.

Mr. SMITH OF NEW JERSEY. Thank you so very much for your testimony and for your fine work. Let me ask a question based on your last comment.

The Secretary's action on Tham Hin is really a welcome first step. Several months ago we had a hearing on Burmese human rights violations and those who have been displaced or are actual refugees. It was a very chilling and very disturbing hearing. We have all been concerned for years about Aung San Suu Kyi, the whole democracy movement, and just how brutal the junta is.

The waiver, it is my understanding, applies only to some of the Korean refugees in Thailand. Are there plans contemplated to expand it so that they are all included; and can you give us any sense as to when that might happen, Secretary Sauerbrey?

Ms. SAUERBREY. Yes, Mr. Chairman. Thank you. First of all, let me say that the Tham Hin camp was the immediate issue because we had anticipated 9,200 persons in that camp this year, and that camp particularly was very high on our priority list because of the conditions in the camp, overcrowding, really very bad conditions. As you know, these are people who have been refugees for more than 15 years.

However, when we worked out our arrangements with the Thai Government, it was clear that we intended to move on to more of this population, and it is a complicated population. There are 16 different ethnic groups, in addition to the Karen, that may have been associated with about 46 other organizations similar to the Karen National Union.

So our hope is that we can quickly move forward. I think we will have to meet with our other governmental organizations very soon to see if we can begin the process that we have gone through with the Karen in Tham Hin and make sure that the waiver can be applied as the inapplicability provision can be applied as quickly as possible to other groups who do not have any issues of violation of national security.

Mr. SMITH OF NEW JERSEY. I appreciate that, and we are certainly very supportive of that.

Mr. Rosenzweig, you confirmed in your testimony, and I quote you:

"The law provides no exception for motivation and thus the statutory definition that could include groups engaged in opposition to repressive regimes."

Presumably, that could be the Northern Alliance. It could be Cubans who resisted Castro. In southern Sudan, it could be those who defended themselves against the Khartoum Government as it committed its genocide there or, conversely, those who in the north, in Darfur, have resisted the Janjaweed. The Montagnard might fall into that. George Washington could have fallen into that category 200 years ago.



My question is, what do you think could be done and when to reconcile that problem? Do we need new legislation, or is there enough flexibility in the law to correct it?

Mr. ROSENZWEIG. Well, as I indicated in my testimony, we have just begun a process with the Karen, and we are anxious to see how that turns out and whether or not that can serve as the first step in what I think has to be a case-by-case set of determinations with respect to the admissibility of any group or individual.

It is important, I think, as Congressman Tancredo mentioned in his statement, to recognize the countervailing values as well, which is the necessity of maintaining flexibility and the ability to address terrorist organizations that mutate with great rapidity and not be encumbered by the designation rules exclusively, for that would limit our ability to address true terrorist concerns.

So what we are looking forward to very much is coming to understand whether or not the exercise of the inapplicability authority that we have used with respect to the Karen proves effective, moving on taking each of the new cases on a case-by-case basis. I think we are prepared to engage in that process.

Mr. SMITH OF NEW JERSEY. Let me ask, about the *Li v. Gonzales* case, which many of us found to be hopefully the last of its kind when someone who fled persecution and was found to be credible by a BIA judge about his assertions that he was persecuted for religion, only to be rejected and then ultimately reversed. Hopefully, it becomes almost standard that this case is taught as an example of what not to do in this process.

My question to any of our panelists is to hear your take on that case. Secondly, the U.S. Commission for International Religious Freedom, Mr. Cromartie will testify in the panel that follows that IRFA mandates training for many, but not all, refugee and asylum adjudicators, and according to his analysis the results have been mixed. He points out that the Asylum Court, U.S. Citizenship and Immigration Services, and the Department of Homeland Security have developed an excellent training module on international religious freedom issues; but the same cannot be said about the Customs and Border Protection officers who exercise expedited removal authority. These inspectors appear to be trained only by a short and generalized video presentation.

Is this in the process of being rectified, because they are very often the people who first encounter someone who may be a true refugee asylum seeker?

Mr. ROSENZWEIG. Let me let Ms. Brand answer the question about the Li case because I think it is in litigation now.

Ms. BRAND. Sure. Actually, the litigation in that case has concluded. That case was handled by the Civil Division when it was in litigation in the Federal courts, the U.S. Courts of Appeals, and I would be happy to get you more information about that case after the hearing, but my understanding is that the case was originally adjudicated based on the facts that were in the administrative record, which is how these cases proceed to the Federal Courts of Appeals.

After the case was initially litigated, my understanding is that the Commission on International Religious Freedom came to the Department of Justice with some evidence that perhaps the admin-

istrative record was not accurate. When that came to the Department's attention, the Department of Homeland Security and the Department of Justice collaborated to have that decision from the Court of Appeals vacated. So the alien is now staying inside the United States, and I think that, in the end, that case was handled appropriately, and my understanding is that we are now collaborating between the two agencies to make sure that that situation is not repeated in the future.

Mr. SMITH OF NEW JERSEY. I appreciate that. Let me also say that this continues to be a concern in other areas, and I would appreciate any comment that you could provide now or on the record. I know for a fact that there were a number of cases where people who were fleeing forced abortion in China were rejected because administrative law judges had it wrong and basically followed the rule of unjust law that this is imposed by the government—just like the law forcing people to register their church or place of worship. But if it was an unjust law to begin with, then this is why we have these asylum provisions. Is that still a problem, as far as you know?

Ms. BRAND. I know that cases like that come up with some regularity. I am not familiar with the details of any of them, but if you would like, I could provide more information after the hearing.

Mr. SMITH OF NEW JERSEY. Thank you very much. Let me just ask Secretary Sauerbrey, last year, there were two B-2 categories that were added. Are there any plans to enhance and expand the B-2 categories in 2006?

Ms. SAUERBREY. I cannot give you the specifics, but we are always looking for new categories. We work through UNHCR, through our NGO partners, and through our Embassies trying to identify additional refugee groups that would qualify.

Mr. SMITH OF NEW JERSEY. Okay. Thank you. Hopefully, the material support issue will not be a bar there as well.

Let me ask you about the Democratic Republic of the Congo. While we are all focused, and rightly so, on Darfur, there are hundreds of thousands of IDPs and refugees in the DRC. Hopefully, we focus on their plight as well, and the same would go for those folks that are internally displaced in the refugee camps in northern Uganda. Obviously, that is a high priority for this Subcommittee and for many of us in the Congress. So if you want to respond or provide something for the record.

Ms. SAUERBREY. I have had two meetings since I have been in my position, one here in Washington where ECHO was with us, and just recently we did a teleconference with them, and we are talking about doing a joint mission to Congo, both to keep attention on it and also to look at opportunities that we may want to pursue in the way of additional refugee populations.

In addition, I might point out that UNHCR, UNICEF, and World Food Program have just returned recently from a joint visit to the Congo, and one of the good things that came out of that was a recognition of a much stronger need for collaboration among the three international organizations, but Congo is very much on our radar screen.

Mr. SMITH OF NEW JERSEY. I appreciate that. Mr. Payne?

Mr. PAYNE. Thank you very much. You know, in refugee works, in many instances, we have a concern for NGOs, and I wonder if any of you would comment on the security of humanitarian aid workers and NGOs in the refugee situations, and what would you suggest as a way that security could be improved? We have even heard recently that some food workers in the Darfur region were attached, and so if any of you would like to answer that question.

Ms. SAUERBREY. Thank you, Congressman. This is a tremendous concern to my bureau. We cannot do our work if the NGOs cannot do their work, and the security situation has been extremely bad in the Sudan-Chad area, in particular, where humanitarian workers have had to evacuate the camps, have had to leave the camps and leave the refugees with perhaps 2 or 3 weeks' worth of food and fuel, but this is a very huge problem.

When I was personally in a camp in northern Uganda, there was the shooting, the attack on the UNHCR compound in Yea where two humanitarian workers died.

So this is an issue that we are very much focused on in trying to work with UNHCR, but it is also an issue of our diplomacy and our ability to work through the efforts that we are making with bringing additional forces, whether it be supplementing the African Union troops or blue hatting troops. There is just obviously a need for more forces on the ground that can assist in protecting the humanitarian workers and the refugee camps themselves.

Mr. PAYNE. Thank you very much. We have different views on this issue, but I would like to know any of your positions or your thoughts on the use of armed guards or military personnel to protect humanitarian assistance programs. Do you feel that it would compromise the aid workers' neutrality and create potentially more of a target, and would armed guards be tempted sometimes to use their authority sometimes in dealing with victims? Sometimes we find that there is a misuse of authority when it is given, so I just wonder what your feelings are about having arms at a place where humanitarian work is supposed to be going on.

Ms. SAUERBREY. Actually, when I was in both Kenya and Uganda, there were armed guards, and there was a good cooperation, particularly in the Kakuma camp in Kenya, there was good cooperation between the Government of Kenya in providing domestic police to be providing protection for the camp. We would all like to believe that this is not necessary, but the conditions are very dangerous for the humanitarian workers, and I have to keep coming back to also for the refugees themselves. There needs to be enhanced protection.

We actually talked last week to the high commissioner, UN High Commissioner Guterres, who was in Washington, about our willingness to work with UNHCR to enhance the security in the Darfur-Chad area.

Mr. PAYNE. Just finally, in your opinion, is there a way that we could work—any of you could answer this—in trying to reach our quotas of refugees? As we indicated, although it has increased a bit since 9/11 when practically everything was cut off, sort of closed our borders down—well, all of our borders to the east and west anyway—what do you think could be done to try to reach the goals of capacity?

We have numbers going unfilled, which would lead you to believe that there are very few refugees in the world since we are not filling the meager quotas that we have for refugees to enter into the United States. I just wonder if anybody would have any suggestion on how we could at least reach our goals since there is such a need there.

Ms. SAUERBREY. Congressman, the Presidential determination for this year would have allowed 70,000 refugees to be admitted. The funding, however, the congressional funding, was a constraint because the congressional funding only allowed for 54,000. So part of this is, indeed, a resource issue, but the other part of it is the much different atmosphere that we are operating in than we were before 9/11.

I would mention a couple of things. First of all, the material support issue is going to result in us being down somewhere between 10 and 14,000 short of the 54,000 that we had planned for for this year.

Secondly, if you look back historically at our program, when we had these very high numbers, we were getting large groups of refugees that were coming, for example, after the end of the Soviet Union, groups that were very easy to reach and very easy to move, very easy to process.

Now when we are going out and doing the work, we are dealing with small groups that are here or there or are in very difficult areas hard to get to. For example, there is a very large population of refugees that we would like to process in Tanzania, but these are remote areas. They are not easily accessed. There are security issues, as we were talking about before, for the humanitarian workers, and when you add that to the demands of today, because of 9/11, the security issues in terms of processing and the health issues that we are dealing with, it is a much more difficult environment than we were working in prior to 9/11.

Mr. PAYNE. Thank you, Mr. Chairman. Thank you very much.

Mr. SMITH OF NEW JERSEY. Mr. Tancredo?

Mr. TANCREDO. Just one question because we have a number of panels. Ms. Sauerbrey, you mentioned in your testimony that part of the work that is done in the process is done by USCIS, and I wonder if you could be specific about exactly what it is they do. What is their role in the process?

Ms. SAUERBREY. I should probably let my colleague answer that because after we have identified and done the initial processing, it goes to Homeland Security.

Mr. ROSENZWEIG. For better or worse, we own that portion of the process. Once the Department of State has done an identification of a potential refugee group, the Citizenship and Immigration Services sends out a team of refugee officers to a particular area, a particular camp, and they conduct very fact-intensive, case-by-case, person-specific interviews to establish that each of the refugees who are nominally identified is entitled to admission in the United States, and that is not just the material support provision that has energized us today but other questions relating to admissibility, criminal records. There is a host of things that they examine.

Each of the individual examiners creates a report, often informed by camp conditions and country conditions, relating to the nature

of the activity that had caused them to become refugees, and makes a recommendation as to whether or not a particular individual is, indeed, a bona fide refugee who meets the criteria for admission to the United States. That, in turn, is reviewed by at least a first-line supervisor, and in difficult cases there are additional levels of review.

That ultimately becomes the determination of the Secretary of Homeland Security to authorize the admission of this particular individual to the United States. To put it in the context of the North Koreans who have arrived in the United States today, that very same process will be ongoing over the next weeks as the people are examined and are determined whether or not to be, indeed, legitimate refugees.

Mr. TANCREDO. Are you concerned at all about the recent revelations about the problems inside USCIS and, specifically, the number of allegations and investigations that are ongoing dealing with adjudicators and others inside the organization who apparently are at least charged with providing various benefits to people in return for either money or sex or because some of these people are actually—I do not know if the word is working for but certainly sympathetic to other governments and actually providing, again, benefits based upon their sympathies to other governments? Has that come up in discussions, and are you concerned about that, especially in relationship to the people who are doing it?

Also, the issue, of course, that has been very disconcerting is the fact that there is apparently so little communications going on with other agencies, even though we have hoped that that was system that we have been able to overcome. Apparently, that is not happening either, on so there is a lot of information that they are not available to, and it is just a real mess, to tell you the truth.

Mr. ROSENZWEIG. Let me take the two parts of that, the information sharing at the end and the allegations of misconduct at the front.

With respect to the allegations of misconduct, of course, we are concerned, and that is part of the subject of an ongoing internal review to make a determination. As you said, they are just allegations. We would take very seriously any determination that an adjudicator had sold adjustment of status for money. I am quite confident that if any review determines that with respect to any particular individual, we will take all appropriate personnel actions that we are lawfully entitled to.

USCIS is a large organization, and I am more than willing to stand behind 99.999 percent of them as excellent civil servants, and, in particular, the group that I know best, the Refugee and Asylum Officer Corps, are some of the most selfless individuals who spend days, indeed, months, out in very daunting conditions doing their job and trying to make themselves available to refugees and asylum seekers, refugees who are seeking to enter the United States. So they, I have the greatest respect for. Those who sell their Federal service, I have none for.

Mr. TANCREDO. Before you go on, if I could just a second, are you aware of the fact that internally USCIS has evidently rejected the notion that they should increase the number of people devoted to that kind of internal security? Not only that, I think I have even

reduced the people who were there in that capacity. Very few were there to begin with, and then they had requested an increase in the number of people who would actually go out and investigate these things. That was turned down.

There is concern among the people who are actually doing the enforcement that, in fact, they have become whistleblowers, at least one of them has done that and left the agency. I just want you to know that internally there does not seem to be that degree of concern that you have expressed, and I am glad to hear your point of view on it. I just hope USCIS has the same viewpoint.

Mr. ROSENZWEIG. I can assure you that that concern is shared, at least at my level, as well as the director of CIS, and I will be happy to get back to you with a detailed answer on our plans for conducting a set of internal reviews.

Mr. TANCREDO. That would be much appreciated.

Thank you, Mr. Chairman.

Mr. SMITH OF NEW JERSEY. Thank you. Ms. Lee?

Ms. LEE. Thank you, Mr. Chairman.

Let me ask you about our policy with regard to the inadmissibility to refugees with HIV or AIDS. As I understand it now, refugees have to qualify for a waiver by showing either the danger that they pose to the public health, that this danger is minimal or that the possible that they would spread the disease is minimal. So I would like to just ask, what is that waiver application process, and how many refugees were turned down for a waiver because of their HIV and AIDS status?

Secondly, what happens with the information on each refugee's HIV and AIDS status? Do you track the rates of infection from where the refugee is from, how they contracted the virus. What exactly happens after the status is determined?

And then the other question I have is just United States-Haitian versus Cuban immigration policy. Of course, I said earlier it remains a double standard. Haitians do not have immediate political asylum when they reach the United States. Many would argue that the political and safety charges, quite frankly, are greater in Haiti than in Cuba. So it is clear that the policy must change, and we must provide temporary protective status to Haitians who are currently here in America seeking political asylum. So can you talk a little bit about that?

Ms. SAUERBREY. In terms of your first questions about HIV/AIDS, I am very aware that refugees are admitted or admissible who have HIV/AIDS. However, the policy in terms of how they are treated, whether they have full-blown AIDS, whether they have HIV status, I think I need to get back to you because this is really set by HHS, so I cannot really answer you in any detail. I simply know it is not a bar——

Ms. LEE. So who handles the waiver application process?

Ms. SAUERBREY. It would be DHS.

Ms. LEE. DHS. Okay. Mr. Rosenzweig?

Mr. ROSENZWEIG. Yes. The waiver process involves, of course, first, the application at the Department of State for somebody for a visa. We have been working with HHS and, in particular, with the Centers for Disease Control in the last several months to reexamine the current status of our HIV proposals. We have not yet de-

veloped any new guidance on that. We are trying to make sure that our rules reflect the best contemporary science and to update them as necessary.

At this juncture, I do not have the numbers for you that you have requested. There were so many issues on the list of questions for the hearing, and that one, unfortunately, was not. I would be happy to get back to you with that, if you would like.

Ms. LEE. Yes. I would like to get the information on that, especially the waiver application process also, just the current status. I would really appreciate that.

Also, let me go back to the second question with regard to United States-Haitian versus Cuban immigration policy in terms of the double standard and in terms of Haitians seeking temporary protective status.

Ms. SAUERBREY. Let me answer the first part, and then I will defer to my colleague.

I had the opportunity to actually go and visit our migrant center in Guantanamo Bay and was able to actually see refugees, both Haitian and Cuban refugees, that had been picked up at sea by the Coast Guard. As I understand, all refugees, except Cubans and Chinese, are treated in one category. So Haitians are not being singled out.

What I did see with the migrant center in Cuba was that if a Cuban who is picked up at sea is asked, through a questionnaire process, if they have certain conditions, and they indicate that they have a genuine fear of persecution, then they go to our migrant center in Guantanamo Bay. When I was there, there were Cubans and Haitians there—I believe there was one Haitian there who had also indicated a fear of persecution, had volunteered that on the Coast Guard cutter. At that point, in Guantanamo, then there is a more detailed process that goes on where those who arrive are asked additional questions, and some will qualify for refugee status and will stay at Guantanamo, and others will be returned, and on that, why do not I defer?

Mr. ROSENZWEIG. I cannot add too much more to what Secretary Sauerbrey has said. There is, in fact, in law no distinction between Haitians and Cubans for those interdicted at sea. Those who express a credible fear go to Guantanamo, where they are judged whether or not their fear is well founded. I do not have the actual number of Haitians who are deemed to have had a well-founded fear of persecution, having been referred to Guantanamo, but the number of Cubans is exceedingly small amongst those interdicted at sea. I worked out the math be able to they gave it to me in two stages, and it is .7 percent of the roughly 2,700 who were interdicted at sea last year, so it is really quite small.

The principal difference in law, of course, does apply to those who make landfall in the United States, but that is not a consequence of a policy that the Department of Homeland Security or the Department of State has developed but, rather indirectly, a consequence of the jurisdictional reach of the INA and the provisions of the Cuban Adjustment Act, and that has been around for 40 years.

Ms. LEE. Okay. So you are complying with the law that has been around for 40 years.

Mr. ROSENZWEIG. Absolutely, ma'am.

Ms. LEE. I got you. Okay.

Mr. ROSENZWEIG. We are doing the best we can, at least.

Ms. LEE. Okay. Good for you. Let me ask you about the temporary protective status, then, with regard to Haitians who are currently here in the United States seeking political asylum.

Mr. ROSENZWEIG. I did have that. Temporary protective status is based upon a very specific set of narrow criteria which are outlined in Section 244 of the INA. After consultation with appropriate agencies, the Secretary of Homeland Security must determine whether there is an ongoing conflict within the foreign state, whether there has been an environmental disaster, such as an earthquake or a flood, or whether there is existing extraordinary or temporary conditions in the foreign state that prevent the nationals from returning safely. Unless the Secretary finds that such circumstances exist, there is no ground for identifying temporary protective status.

We have worked closely with the Government of Haiti and the international community to address Haiti's security and humanitarian concerns. Since Fiscal Year 2004, for example, we have allocated nearly \$400 million in assistance to Haiti, including \$46 million in disaster relief following Jeannine and Hurricane Dennis and recently \$200,000 to the International Committee on the Red Cross in support of its humanitarian programs.

We are going to continue to monitor and gather information regarding whether or not a TPS designation is appropriate for non-criminal Haitians consistent with the long-standing policy. I should add that we may also, in individual cases, as opposed to on a group basis, issue a temporary stay of removal that allows an individual to remain in the United States upon a particularized showing.

Ms. LEE. Thank you, Mr. Chairman. Let me just conclude by saying, as you know, after the coup d'etat in 2004, many Haitians believed that they were in jeopardy and left their country, and, of course, the country was in turmoil. We watched this democracy deteriorate right in front of our eyes as a result of, unfortunately, some of our involvement. Only 535 asylum seekers were granted refugee status in 2004. This is out of 5,057 cases. So I hope you look at that and come up with something that makes a little bit more sense and is not discriminatory against Haitians. Thank you.

Mr. ROSENZWEIG. Thank you.

Mr. SMITH OF NEW JERSEY. Ambassador Watson?

Ms. WATSON. Thank you so much, Mr. Chairman, and I want to thank the panel. I, too, want to join my colleague, Ms. Lee, about what really appears to be a more complex process that Haitians go through. I know they are a poor nation, and people are escaping and trying to find shelter in countries and islands near or around. I understand the current thinking is that they pose a risk to national security because they divert the activities of the U.S. Coast Guard from its homeland security duties.

Right now, in my city of Los Angeles, California, we have had mega demonstrations from illegal immigrants who are trying to work something out for them, and I would hope that the view of Haitians would be more accommodating than the way they have been treated in the past.



But my concerns now are going to the issue that I raised in my introductory presentation. To Secretary Sauerbrey, I understand that you received our letter and did respond in March—lord knows where it might be. We recognize that there are problems. We made reference in the letter to you about Bangladeshis. There are 250,000 stateless Baharis, and they are also called stranded Pakistanis, and they have been in suspended animation for over 30 years, and we would like to know just what is going on in that regard. Most of them are residing in temporary camps that have horrible conditions that are very harsh and becoming even worse.

We are concerned about these people who are not anchored in our country. They have been taken away. They have left their own homelands, and so they have no real base. In some of the camps, there is no education or medical facilities and no regular food assistance. So we have a global concern, particularly in the hot spots that we have been concerned about.

And so if you would not mind responding now. We will go back and search and see if we can find your letter, but maybe you can send us a duplicate that would respond to these concerns. I would appreciate it.

Ms. SAUERBREY. Thank you very much, and we will send a copy of the letter.

I certainly welcome your interest in this issue because it does affect millions of people around the world, and we recognize that the right to nationality is a basic human right.

One of the priorities that I set when I came into my position was for us to focus on the issue of statelessness, along with the issues of gender-based violence, trying to help refugees become more independent through job training and education in the camps. So statelessness is very much on our radar screen.

In fact, yesterday, I went to a policy meeting in my bureau. We have a focal point on statelessness. I have asked my senior advisor to make this one of her priorities. In a concrete way, we have resettled one of the large populations last year—we are still resettling them this year—the Nuskeshan Turks. That is an example of a stateless population, many of whom qualified for refugee status, that we have made an effort to help.

A lot of this requires a political solution. Some if it we can address through a humanitarian solution, but a lot of it is a political solution, and it is going to require, I think, a focused effort with countries to recognize their responsibility to their own people. Whether they have designated them as citizens or not, they are within their borders and in many cases have been within their borders for many, many years. So I think this is something that we need to work together with Congress to find better solutions, but it is very much one that we are interested in and will be working to address as best we can.

I might also mention that UNHCR is the international organization that has the mandate for statelessness. UNHCR is very stretched for funds because they have taken on the responsibility for IDPs in the new humanitarian reform. So one of the issues is, as we look at this universe of people who need protection or need assistance, is how we can now take on the issue of IDPs, and then,

looking to the future, where does statelessness fit into our program and into our resource base?

Ms. WATSON. So many of these stateless people have children, and education is something that is not a part of their existence day to day. Could you comment on what is being considered to provide education to the children of the stateless? Is that under your jurisdiction, or would it be with the other international NGO?

Ms. SAUERBREY. Probably it falls largely with USAID and their country programs. Because stateless people do not fall under anybody's mandate really, it has been a forgotten problem. There are many ocean exploration stateless people who live in the community where they were born, and even though they do not have documentation, they exist virtually as citizens of the place where they live. Others, as you are indicating, are very poorly treated, very much mistreated, and need protection.

We need to work closely with UNHCR on this because, as I said, they have the international mandate, and I think the reason that they have not addressed it more fully is because of the lack of resources. UNHCR's budget this year is very stretched just trying to deal with the refugee responsibility and the new responsibilities that they are taking on for IDPs in three pilot countries.

Ms. WATSON. Thank you. Am I out of time?

Mr. SMITH OF NEW JERSEY. No.

Ms. WATSON. All right. Thank you so much.

I would like to address this to Ms. Brand. The United States has not signed on as a party to either the 1954 convention relating to the status of stateless persons or the 1961 convention on the reduction of statelessness. Could you give us some background on how our Government came to the decision not to join these agreements, and could you also explain what changes to those agreements would improve them to the point that we might consider joining them?

Ms. BRAND. I am unfamiliar with that issue. I would be happy to go back and discuss that with the right people at the Department of Justice, if that is okay.

Ms. WATSON. All right. We will send this to you by e-mail,——

Ms. BRAND. That is fine.

Ms. WATSON [continuing]. And if you respond to us by e-mail, we will get it this time.

Ms. BRAND. Absolutely. Okay.

Ms. WATSON. All right. Then if I can just go on to the Acting Assistant Secretary, Mr. Rosenzweig. What policies does DHS have in place for coping with asylum seekers who cannot demonstrate effective citizenship, and what plans might you have to address this particular concern in the future?

Mr. ROSENZWEIG. Thank you very much for the question, Congresswoman. Actually, we have a rigorous set of training in which we advise our officers on means by which we attempt to discern citizenship. Sometimes it is true that many people are stateless, but oftentimes the stateless claim can be resolved in certain circumstances. With respect to those people who are, in fact, without any citizenship at all that we can discern, they are treated as any other asylum seeker arriving at a port of entry save that they are not eligible for discretionary relief such as parole into the country.

That, as I understand it, is mandated by law, not by policy. So in that regard, if we cannot make a determination as to citizenship, we are somewhat bound by the requirements that you have got.

Stateless persons may qualify for asylum, though, if they demonstrate a well-founded fear of persecution in their country of last residence. So if one appears at the land or sea border and can establish a well-founded persecution from the country from which one has fled, that is not a barrier to achieving asylum status here; it simply denies you the ability to have certain discretionary relief pending the determination.

Ms. WATSON. All right. Thank you very much, and thank you, Mr. Chairman, for the time.

Mr. SMITH OF NEW JERSEY. Thank you. Let me ask a few additional questions, which you may want to provide answers for the record.

I understand the Department has recently acted on two key grant asylum cases involving some Cuban doctors and an Indonesian family. If you want to speak to that or provide us information for the record.

Secondly, the centerpiece of the Clinton-Castro agreement in the mid-1990s was to use United States assets, including the Coast Guard, to interdict Cubans on the high seas and to return them to Cuba. I have a question regarding how many have we returned, how are they tracked, and how are they treated upon their return?

Next, the Montagnard in Cambodia; we understand that several who have actually escaped a second time have spoken to the fact that they had been very cruelly mistreated, and the UNHCR has referred them to us for further action. I am wondering what we are doing to try to assist those Montagnard who are in Cambodia right now.

Also, we heard that, about 5 months ago, a group of some 28 Mong teenagers, men and women, were reportedly arrested by Thai police. They have now virtually disappeared. There is a fear they have been deported to Laos. I wonder if you could tell us if we have any information on them.

And then, finally, on the whole issue of the people who have escaped from North Korea into the People's Republic of China. I recently met with UNHCR High Commissioner Guterres, who is very, very passionate about protecting, finding, and providing a safe haven for these individuals. I was very encouraged that he raised the issue with Beijing. They are in flagrant violation of the refugee convention by not assisting.

We had hearings where we heard from women who were trafficked, who made it across the border into the PRC only to be trafficked again. In one case, a woman went in search of her daughter who had been trafficked, and then she and her daughter were trafficked, a terrible and tragic situation.

Just yesterday, China was elected to sit as a member in good standing on the new Human Rights Council, and if that is not a contradiction in terms, I do not know what is. But what can be done to help those individuals? There are many along that border who, again, the Chinese could provide help to and don't.

Finally, on the T-visas; how is that going? As you know, that legislation was very, very difficult to enact, particularly the part relat-

ing to T-visas for women who have been trafficked and are the lucky ones who make it here. Perhaps now or for the record, give us some elaboration on that, and I throw that out to any of our distinguished witnesses. Secretary Sauerbrey?

Ms. SAUERBREY. Did you want us to respond?

Mr. SMITH OF NEW JERSEY. If you could on those you would like to and provide additional information on.

Ms. SAUERBREY. In the interest of time, I will be brief. The two I would like to particularly mention are the Montagnards and the Mong. We have been, virtually daily and weekly, following the children that have disappeared from Thailand, the Mong children. This is just such an outrageous situation. We are doing everything we can, through our Ambassadors, through UNHCR, through putting pressure on the Lao, to try to get them to find these children. It is an issue between Laos and Thailand. We are very concerned about the well-being of those children. They have been gone now for a long time.

UNHCR did send the former Ambassador to Laos, Wendy Chamberlain, who is now the deputy high commissioner, to try to work this out. Laos has simply not been at all helpful. They continue to say that if Thailand does something, then they will see if they can find these children. It is a horrible situation.

As far as the Montagnards, we are very aware that UNHCR has had access and has been doing monitoring of the Montagnards who have returned to the highlands. However, we have been getting very disturbing stories about the double backs, who are claiming persecution, as well as a recent story of 13 homes that were burned where the story is they were burned out because they were having religious services. So we are trying to find out more about that.

Our Ambassador to Vietnam is going to be visiting with me on Monday, and we are going to be talking about this further, but we are in the process of trying to make a decision about whether to do our own interview and consider them as refugees under our program as opposed to UNHCR because our standards are different.

Mr. ROSENZWEIG. I will give you a partial answer on the Cuban migration accords. I have the data for the last fiscal year. As you know, the migration accords have been in effect since the mid-1990s. So I will be happy to go back and get you greater depth of data. For last year, however, roughly 2,600 Cuban migrants were interdicted at sea. Of those, roughly 2,400 were subject to the migration accords. The rest of them were directly transferred to third countries like the Bahamas.

Of the 2,400, only 2.5 percent were found to actually have a credible fear of return to Cuba and were taken to Guantanamo for further protection and screening, and of that, 47 percent were found not to have a protection concern and were returned to Cuba. That is on top of the others. Twenty-two percent chose voluntarily to return to Cuba, and only 31 percent of the 2.5 percent, which comes out to .775, actually had protection concerns and were referred by the Department of State to third countries.

So the overwhelming majority of those interdicted at sea, of the 2,400 subject to the accords, wound up back in Cuba pursuant to our agreement. I can only hypothesize that the percentages of 2005 are not different from other years, but that is speculation.

Mr. SMITH OF NEW JERSEY. Do we track their treatment?

Mr. ROSENZWEIG. We do. That is through the U.S. interests section, and I believe the State Department tries to keep track of those. We will get you details on that.

Mr. SMITH OF NEW JERSEY. That would be very important, to know how well or poorly they were treated upon return.

Ms. BRAND. I think the only issue that you listed that affects the Department of Justice is the issue of T-visas. The Attorney General has identified human trafficking as one of his top priorities. There are some legal limitations on the circumstances under which T-visas can be granted. Our civil rights division works closely with the Department of State and others on particular cases in which those visas can be granted, and I would be happy to get you more information about that.

Mr. SMITH OF NEW JERSEY. Thank you.

Ms. PAYNE. Mr. Chairman, two things. One, I would like to ask, Mr. Chairman, if we could have unanimous consent to place a statement in the record from Roberta Cohen at Brookings Institute on IDPs. Ms. Cohen is an adjunct to the special envoy of UN Secretary General Annan on UN refugees, and I would like to have that submitted.

Mr. SMITH OF NEW JERSEY. Without objection, so ordered.

Mr. PAYNE. Secondly, although we are dealing primarily with the issue of U.S. refugee protection and resettlement, primarily as it deals with us here, I just want to, since we do not have the opportunity too often to have people of your caliber on this particular situation—I am not sure whether we will have the opportunity to have you back again, but I would just like to mention that there are really problems with Afro-Latinos that we in the Congressional Black Caucus have been spending additional time and concern about. As you know, African-Colombians comprise about 25 percent of the population there, and there are a tremendous number of IDPs in Colombia.

I just want to put for the record here, since you are here, you may have an opportunity to get back to us or the proper departments that Afro-Latinos account for about 28 percent of the population in Latin America, and Colombia certainly boasts the second-largest African-descendant community in the region, Brazil, of course, the largest. But 5 years ago, we in the Congressional Black Caucus had a working group, and we started to address the internal displacement and systematic violence and human rights abuses against the African-Latino communities, especially in Colombia.

Just last week, the UN Commission on Human Rights released a report that outlined the increase in displaced African-Colombians. Right-wing paramilitary forces and left-wing guerrilla groups continue to use forced displacement to gain control over strategic and economically valuable territory in Colombia, weakening their opponent's base of support and undermining government control and authority. The most valuable property is the ancestral lands on which the African-Colombians and indigenous communities reside.

Just in case you are not familiar with the situation, let me give you a very brief account, and this is of real importance because they are being hit by both the left and the right, which you have

got nowhere to go then. Usually one group attacks, but when you get it from both sides, and the military do not intervene—just in April 2001, paramilitary forces from Kalima massacred 100 people in the Nayah region. These are all Afro-Colombians.

Mr. Orlando Valencia, a leading African-Colombian leader and organizer, was kidnapped and murdered last week before he was scheduled to come to give a presentation in Chicago just last week. Two weeks ago, an African-Colombian senator, Piedad Cordado, chief of staff, was found with his body dismembered, skull crushed, and skin burned off. According to the Armed—Services Committee, at least 200 African-Colombian men have lost their lives to violence and racism, and this year alone, most recently, nine men were killed just over the past week.

So I just raise this issue because you, of course, are in the business of refugee and displaced people as it relates to us, but I think that, you know, we just want you to be aware that we are really concerned about what is happening. When you meet with your counterparts from countries like Colombia and those that are allied with us, these questions may be raised. Thank you. Thank you, Mr. Chairman.

Mr. TANCREDO [presiding]. Thank you, and we thank the panel very much for your endurance, and you are dismissed. We will bring up the next panel. As long as, at least, I am in this chair, we will begin to abide by the 5-minute rule, as we have another panel after this, and it is getting so late. The Chairman may change that when he comes back. I am sure he will, but I think we are going to try to move along here.

[Pause.]

Mr. TANCREDO. First, Mr. Michael Cromartie is the Chair of the Commission on International Religious Freedom and is the Vice President of the Ethics and Public Policy Center in Washington, DC. Mr. Cromartie has contributed book reviews and articles to several publications, including *Christianity Today* and *The World*. He is the editor of 12 books on religion and politics, including most recently, *A Public Faith: Evangelicals and Civic Engagement*. Mr. Cromartie is the host of Radio America's weekly show, "Faith and Life."

Mr. Tad Stahnke joined the U.S. Commission on International Religious Freedom in February 2000 and currently serves as the deputy director for policy. Prior to joining the commission, he also served as the judicial clerk for The Honorable Wilfred Fineberg in the U.S. Court of Appeals. Mr. Stahnke is the author of several works, including, *The Freedom to Change Religion in International Human Rights Laws*.

Welcome, and, Mr. Cromartie, I understand you are on a tighter schedule. Please go right ahead.

**STATEMENT OF MR. MICHAEL CROMARTIE, CHAIR, U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (USCIRF)**

Mr. CROMARTIE. Thank you, Mr. Chairman. Let me begin by thanking you for this opportunity to testify, and I plan to summarize the commission's testimony in my oral remarks but would like to request that my full written statement be included in the record.

Mr. TANCREDO. Without objection.

Mr. CROMARTIE. Thank you. For several years, the commission has monitored the implementation of Title VI of the International Religious Freedom Act, which concerns matters of U.S. asylum and refugee policy. Congress, in the same act, also authorized the commission to undertake a major study on the treatment of asylum seekers subjected to expedited removal. That study was released in February 2005.

The provisions of Title VI of IRFA address the challenge that well-trained adjudicators operating within a strong procedural framework are necessary to protect asylum seekers who are fleeing religious persecution, as well as the integrity of the asylum and refugee programs.

Title VI of IRFA does a great deal to promote fairness in this complex system of adjudication. First and foremost, Congress requested that the State Department's Annual Report on International Religious Freedom, which is an excellent foreign policy tool, also serve as a key resource to asylum and refugee adjudicators. The commission is concerned, however, that other provisions of Title VI remain underimplemented, at best.

While we address this in detail in our written statement, there are three specific issues that I would like to bring to your attention: First, inadequacies in training and procedures for those who make asylum and refugee decisions; second, barriers to the refugee program for those fleeing religious persecution, in particular, barriers relating to the so-called "material support bar"; and, third, the failure to implement fully Congress's requirement to identify and keep out of the United States foreign officials responsible for severe religious freedom violations.

IRFA mandates training for many but not all refugee and asylum adjudicators. The results so far have been mixed. The Asylum Corps within USCIS at the Department of Homeland Security has developed an excellent training module on international religious freedom issues. The Immigration Courts and the USCIS Refugee Corps have also conducted regular training, as required by IRFA.

The same cannot be said, however, about the Customs and Border Protection officers who exercise expedited removal authority. These inspectors appear to be trained only by a short and generalized video presentation. Agents of the Border Patrol apparently receive only an overview of IRFA but not the specific and detailed training on religious persecution that is required by the act.

The need for religious freedom training mandated by IRFA was highlighted in the past year when the commission approached the Department of Justice with concerns about arguments that were being advanced by the Department in the matter of *Li v. Gonzales*. In that case, Justice Department attorneys, defending a decision of the Board of Immigration Appeals, argued before the Fifth Circuit that China had a "sovereign right" to criminalize unregistered religious activity. The commission was concerned that this position undermined well-settled United States foreign policy to promote religious freedom in China. The Justice Department responded to the commission's concerns, and ultimately it reversed its position.

Now, subsequently, the commission was invited to lead trainings of attorneys at the board and the Justice Department's Office of

Immigration Litigation. While we welcome these efforts, the commission continues to be concerned by some positions taken by DOJ and DHS attorneys concerning religious freedom conditions, particularly in China and Iraq. Consequently, the commission has recommended that both the board and the Office of Immigration Litigation should be subject to mandatory training under IRFA. Such training should also be required for the Department of Homeland Security attorneys who argue asylum cases before the immigration courts.

In addition, Section 602 of IRFA mandates training on the U.S. Refugee Program for consular officers. While consular officers do not adjudicate refugee applications, they are authorized to refer individuals in need of protection to the U.S. Refugee Program. However, such referrals rarely take place.

The Department of State has issued conflicting statements on the extent to which consular officers are trained in refugee law and policy. Consular training on the refugee program appears to be limited to a very narrow issue; that is, application for immediate relatives of refugees.

We would encourage the committee to request that the State Department provide copies of all training materials relevant to consular training under Section 602, as the commission's repeated efforts to obtain these materials from the State Department have not yet been successful.

Section 602 of IRFA also mandated steps to ensure that bona fide refugee applicants are not subject to a denial of protection through no fault of their own, i.e., due to faulty case preparation or hostile biases by personnel who assist the U.S. Government with the refugee application process. However, as is further detailed in my written statement, this section of Section 602 remains largely unimplemented by the Department of State.

The commission is also concerned that some who are fleeing religious persecution still do not have adequate access to the refugee program despite several provisions in IRFA designed to facilitate that access.

Pursuant to IRFA and the North Korean Human Rights Act, the State Department's annual report to Congress on the refugee program now contains more detailed information on religious persecution of refugees. Indeed, the refugee program has taken steps to facilitate access for members of some religious minority groups who have fled countries designated by the Secretary of State as countries of particular concern for religious freedom violations. These include Burmese Chin and Karen, as well as the Montagnards who fled Vietnam. Efforts to find a durable solution for these groups, however, having stalled by a long-standing policy impasse between the Departments of Justice, Homeland Security, and State over how to implement a waiver for the material support bar.

Now, just prior to this hearing, the Administration reported that it has, after several years, authorized a waiver for some of the Burmese Karen in the Tham Hin camp in Thailand. The Administration emphasized, however, that the waiver was on foreign policy grounds and that the basic process for determining waivers has still not been developed by the three agencies.



The Departments of State, Homeland Security, and the Justice Department should, without further delay, implement the statutorily authorized waiver process for the material support bar to ensure that the bar, as it should, prevents the admission of those who support terrorism but not those who have fled terrorism.

IRFA also contains significant, but largely ignored, immigration enforcement provisions. Section 604 holds any alien inadmissible who, as a foreign government official, was “responsible for or directly carried out particularly severe violations of religious freedom.” This provision, however, has only been invoked once and never to exclude an official from any country designated by the Secretary of State as a country of particular concern.

Under IRFA, the President is required to identify specific officials responsible for severe violations of religious freedom and to report the names of these individuals to Congress and to the Federal Register. To date, however, no such individual officials have been identified from countries of particular concern in spite of these requirements. The commission, therefore, urges the Departments of State and Homeland Security to implement these provisions to identify and exclude those officials found responsible for severe religious freedom violations.

I would like to raise one further issue that relates to the Department of Homeland Security’s general failure to respond to the findings and recommendations contained in the commission’s study on asylum seekers subject to expedited removal. The commission is convinced that, if carried out, these recommendations would allow expedited removal to protect our borders while at the same time protecting bona fide asylum seekers.

The commission study was released in February 2005 and identified serious implementing flaws which place legitimate asylum seekers at risk of being returned to countries where they may face persecution. The study also found that bona fide asylum seekers were almost certain to be detained inappropriately by DHS under jail-like conditions or in actual jails.

The Department of Homeland Security, however, has yet to respond to the commission or, as requested by the DHS Appropriations Subcommittee, to the Congress, regarding most of the findings and recommendations of the study to address these concerns.

One year after the release of the report, the Department did, in response to a key commission recommendation, appoint a refugee and asylum policy coordinator, Igor Timofeyev. Also, late last month, the USCIS Asylum Corps issued guidance to the commission’s findings relating to their role in credible fear determinations. The commission looks forward to working with Mr. Timofeyev and other senior officials at DHS to address in a comprehensive way the findings and recommendations of the commission’s study.

We would also note that many of the study’s recommendations have been introduced by legislation by Senators Lieberman and Brownback in the Safe and Secure Detention and Asylum Act of 2006.

The commission remains concerned, however, that the Department of Homeland Security has expanded expedited removal without addressing substantive problems identified with Customs and Border Protection and Immigration and Customs Enforcement. In-

deed, the commission is particularly concerned that DHS may be taking further steps with regard to asylum and expedited removal without taking into account the findings of the study.

The Office of the DHS Ombudsman recently proposed to shift certain expedited removal functions that are designed to protect bona fide asylum seekers from the USCIS Asylum Corps to personnel in the border protection and immigration enforcement agencies in DHS. This is despite the USCIRF study finding that USCIS has far more effective quality assurance procedures than the other agencies. Moreover, the ombudsman's extensive proposal neither mentions nor takes into account the USCIRF study.

To conclude, then, the United States has a proud tradition of offering refuge to those suffering religious persecution. Congress strengthened the U.S. Refugee Program when it enacted IRFA, and the commission looks forward to continuing to work with you and the Subcommittee to ensure the full and fair implementation of IRFA's refugee and asylum provisions. Thank you again for this opportunity to testify.

[The prepared statement of Mr. Cromartie follows:]

PREPARED STATEMENT OF MR. MICHAEL CROMARTIE, CHAIR, U.S. COMMISSION ON  
INTERNATIONAL RELIGIOUS FREEDOM (USCIRF)

Mr. Chairman and distinguished Members of the Subcommittee, let me begin by thanking you for the opportunity to testify today at this important hearing.

As stated in the preamble of the International Religious Freedom Act of 1998 (IRFA):

The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.

Consistent with the language in the preamble of the legislation, Title VI of IRFA included a number of provisions related to asylum seekers, refugees, and immigrants; with particular attention to those individuals who have fled—or committed—severe violations of religious freedom. For several years, the Commission has monitored the implementation of this provision of IRFA. In the same Act, Congress authorized the Commission to undertake a major study on the treatment of asylum seekers subject to Expedited Removal. That study was released in February 2005.

Unlike other refugee applicants who face persecution due to a more external characteristic such as race, nationality, group membership or political opinion, religion-based refugees fled persecution for carrying a much less visible characteristic: faith, belief, and/or a way of life.

The intangibles of religious faith make religion-based refugee claims the most difficult to prove for *bona fide* asylum seekers. Ironically, these same intangibles also make religion-based claims attractive for fraudulent applicants seeking to deceive inadequately trained refugee adjudicators.

The provisions of Title VI of IRFA address the challenge that well-trained adjudicators operating within a strong procedural framework are necessary to protect asylum seekers who are fleeing religious persecution, as well as the integrity of the asylum and refugee programs.

Title VI of IRFA does a great deal to promote fairness in this complex system adjudication. First and foremost, Congress requested that the State Department's Annual Report on International Religious Freedom—which is an excellent foreign policy tool—also serve as a key resource to asylum and refugee adjudicators.

## IRFA-MANDATED TRAINING OF ASYLUM AND REFUGEE ADJUDICATORS: MIXED RESULTS

IRFA mandates training for many, but not all, refugee and asylum adjudicators. The results, so far, have been mixed.

The Asylum Corps at U.S. Citizenship and Immigration Services (USCIS) at the Department of Homeland Security (DHS) has developed an excellent training module on international religious freedom issues. The Immigration Courts and the USCIS Refugee Corps have also conducted regular trainings as required by IRFA.

The same cannot be said, however, about the Customs and Border Protection (CBP) officers who exercise Expedited Removal authority. These inspectors appear to be trained by only a short and generalized video presentation. But even this is more training than has been received by agents of the Border Patrol, who, despite IRFA requirements, receive no training on religious persecution.

The need for the religious freedom training mandated by IRFA was highlighted in the past year, when the Commission approached the Department of Justice (DOJ) with concerns about arguments advanced by the Department in the matter of *Li v. Gonzales*. In that case, Justice Department attorneys—defending a decision of the Board of Immigration Appeals—argued before the U.S. Court of Appeals for the Fifth Circuit that China had a “sovereign right” to criminalize unregistered religious activity. The Commission was concerned that this position undermined well-settled U.S. foreign policy to promote religious freedom in China. The Justice Department responded to the Commission’s concerns and ultimately reversed its position.

Subsequently, the Commission was invited to lead trainings of attorneys at the Board and the Justice Department’s Office of Immigration Litigation. While we welcome these efforts, the Commission continues to be concerned by positions taken by DOJ and DHS attorneys concerning religious freedom conditions; particularly in China and Iraq. Consequently the Commission has recommended that both the Board and the Office of Immigration Litigation should be subject to mandatory training under IRFA. Such training should also be required for Department of Homeland Security attorneys who argue asylum cases before the immigration courts.

## IRFA REFORMS TO IMPROVE PROTECTION FOR REFUGEES WHO FLEE RELIGIOUS PERSECUTION THWARTED BY INTER-DEPARTMENTAL PROBLEMS IMPLEMENTING RECENT LEGISLATION

The Commission is also concerned that some who are fleeing religious persecution still do not have adequate access to the U.S. Refugee Program, despite several provisions in IRFA designed to facilitate that access.

Both the refugee program and the asylum program offer protection by allowing individuals with a well founded fear of persecution to secure legal immigration status in the United States. The asylum program, however, is for any applicant in the United States, and is subject to administrative and judicial review. For asylum seekers outside of the United States, only those who belong to a “processing priority” designated by the State Department are eligible to submit an application for the Refugee Program, and denied applications are not subject to any administrative or judicial review.

Section 602 of IRFA contains a number of provisions relating to training, reporting, as well as operating procedures to ensure that, even without administrative or judicial review, the overseas refugee program is accessible to those who flee religious persecution and treats them fairly.

To ensure that refugees who flee religious persecution receive due consideration, the Act requires that the Refugee Program include descriptions of religious persecution of refugee populations in its annual report to Congress. Pursuant to IRFA and the North Korea Human Rights Act, the State Department’s Annual Report to Congress on the Refugee Program now contains more detailed information on religious persecution and refugees. Indeed, the Refugee Program has taken steps to facilitate access for members of some religious minority groups who have fled countries designated by the Secretary of State as countries of particular concern for religious freedom violations. These include Burmese Chin and Karen, as well as the Montagnards who have fled Vietnam. Efforts to find a durable solution for these groups, however, have been stalled by a longstanding policy impasse between the Departments of Justice, Homeland Security, and State.

Specifically, the statutory “bar” on admissibility to those who have provided “material support” to terrorists has inadvertently become a barrier for refugees and asylum seekers who have fled religious persecution at the hands of terrorists and re-

pressive regimes<sup>1</sup>. Essentially, an alien is now held inadmissible if he or she provides any in-kind or monetary assistance (“material support”) to any group which advocates, conspires to commit or commits an illegal act of violence—even if such support is provided under duress, or is directed toward a group supported by the United States.

Just prior to this hearing, the Administration reported that it has, after several years, authorized a waiver for the Burmese Karen in the Tam Hinh Camp in Thailand. The Administration emphasized, however, that the waiver was on “foreign policy grounds” and that the basic process for determining waivers has still not been developed by the three agencies.

The Departments of State, Homeland Security, and Justice should—without further delay—implement the statutorily authorized waiver process for the material support bar established by the USA Patriot Act, as amended by the REAL ID Act, to ensure that refugees and asylum seekers who have fled terrorism and repressive regimes are not barred from the refugee program because they were physically forced to assist a terrorist organization, or because they provided inconsequential support to organizations which oppose particularly oppressive regimes. The Commission also urges Congress to take action to ensure that the bar, as it should, prevents the admission of those who support terrorism, but not those who have fled it.

The material support bar, however, is not the only barrier that impedes access to the Refugee Program for those fleeing religious persecution. As the Commission found during its visit to China in August 2005 and in its recent study of conditions inside North Korea, North Koreans in China are routinely deported by Chinese authorities without any opportunity to pursue an asylum claim. Once returned to North Korea, these deportees face severe persecution for suspected contacts with foreign political and religious influences.

The United States Department of State—in a report issued under section 301 of the North Korea Human Rights Act—and the United Nations High Commissioner for Refugees (UNHCR) have made it clear that China’s treatment of North Koreans constitutes a violation of its obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

The North Korea Human Rights Act included a number of provisions to facilitate access to the Refugee Program for asylum seekers who fled North Korea—another country of particular concern. Nevertheless, to date only six North Koreans have been admitted to the United States as refugees.

While the Chinese government would not likely provide the United States with the necessary cooperation to process North Korean refugees bound for the United States, North Koreans also live insecurely in other countries of first asylum—such as Russia and Thailand—where the United States has a refugee processing presence. Nevertheless, the UNHCR has been deterred from referring North Koreans to the United States for resettlement. This is because—in spite of the North Korea Human Rights Act—North Koreans remain one of only three nationalities who may not even be interviewed by the Department of Homeland Security until after completing a special security clearance process which, the Department has apparently been unable to implement. The inability of the United States to accept a single North Korean refugee, until now, has undermined its leadership to encourage other states to offer North Koreans protection. The Commission urges DHS to address this issue in order to facilitate greater access by North Korean refugees to the U.S. Refugee Program.

#### IRFA REFORMS TO IMPOSE OPERATING PROCEDURES FOR U.S. REFUGEE PROGRAM REMAIN UNDER-IMPLEMENTED

Section 602 of IRFA attempted to ensure that steps are taken to ensure that *bona fide* refugee applicants are not subject to an unfair disadvantage and denial of protection through no fault of their own; i.e. due to faulty case preparation or hostile biases by contractors and personnel who assist the U.S. government with refugee case file preparation, completion of refugee applications, and language interpretation. However, this aspect of Section 602 remains largely unimplemented by the Department of State.

Section 602 requires that the Department of State develop guidelines to prevent “hostile biases” on the part of contractors and refugee program personnel—from victimizing refugee applicants. To date, no hostile bias guidelines have been drafted and implemented by the Department of State, which has done nothing more than insert a provision in their contracts indicating that contractors with the U.S. Ref-

<sup>1</sup> See 8 U.S.C. 1182(a)(3)(B) (2006), as amended by Section 411 of the USA PATRIOT ACT OF 2001 (P.L. 107–56) and Section 103 of the REAL ID Act of 2005 (P.L. 109–13).

ugee Program are responsible for preventing hostile biases in the course of case file preparation.

Section 602 also requires that the Department of State issue case file preparation procedures to ensure that inadequate case preparation—through no fault of the applicant—will not prejudice refugee claims. And while the Department of State has issued case file preparation procedures through its computer-based “worldwide refugee applicant processing system (WRAPS),” these procedures focus on bio-data and administrative information. They do not speak at all to ensuring the accuracy and integrity of the preparation of the refugee’s persecution claim itself, which is the heart of the refugee adjudication.

#### IRFA REQUIREMENT FOR CONSULAR OFFICER TRAINING ON REFUGEE ASYLUM LAW REMAINS UNIMPLEMENTED

Section 602 of IRFA also mandates training on the U.S. Refugee Program for consular officers. The Commission remains concerned, however, that training of State Department consular officers in the Refugee Program continues to fall far short of the requirements set forth in section 602(b) of IRFA.

While consular officers do not adjudicate refugee applications, they are authorized to refer individuals in need of protection to the U.S. Refugee Program.<sup>2</sup> Such referrals rarely take place. A recent report by Professor David Martin at the University of Virginia, commissioned by the State Department’s Bureau of Population, Refugees and Migration, recommended that the Department of State provide new Foreign Service officers with more systematic instruction on refugee and humanitarian programs generally and on the specific opportunities and procedures for referrals.<sup>3</sup> Further, the Commission’s Expedited Removal Study expressed concern over evidence indicating that it may be increasingly difficult for refugees and asylum seekers to obtain protection from the United States, and called for a study on the extent to which consular officers are trained in the Refugee Program, as is required by IRFA, and the impact which such training is having on referrals made by U.S. embassies to the refugee program.

The Department of State has issued conflicting statements on the extent to which Consular Officers are trained in refugee law and policy. Consular training on the refugee program appears to be limited to a very narrow issue; that is, applications from immediate relatives of refugees. We would encourage the Committee to request that the State Department produce copies of all training materials relevant to the consular training of Section 602, as the Commission’s repeated efforts to obtain these materials from the State Department have not been successful.

#### INADMISSIBILITY OF SEVERE VIOLATORS OF RELIGIOUS FREEDOM: STRENGTHENED BY CONGRESS, LARGELY IGNORED BY THE DEPARTMENTS OF STATE AND HOMELAND SECURITY

IRFA also contains a significant—but largely ignored—immigration enforcement provision.

Section 604 of IRFA holds any alien inadmissible who, as a foreign government official, was “responsible for or directly carried out . . . particularly severe violations of religious freedom.” On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004, which strengthened this provision to provide a lifetime bar on admissions for such aliens. Prior to that time, the provision only applied for 24 months after the violation. The provision, however, has only been invoked once and never to exclude an official from any country designated by the Secretary of State as a country of particular concern. In March of 2005, it was used to exclude Governor Nahendra Modi of Gujarat state in India, in that he failed to step in to protect thousands of Moslems from deadly riots.

The Commission has not seen any evidence that the Departments of State and Homeland Security have developed a look-out list of aliens who are inadmissible on religious freedom grounds pursuant to Section 604.

Directly related to identifying and barring severe religious freedom violators from entry to the United States, are the requirements under IRFA that the President

<sup>2</sup>This is an important function, as individuals fleeing persecution may not submit an application for refugee status unless they either (1) receive such a referral from an Embassy or the United Nations High Commissioner for Refugees or (2) fall into one of the narrowly defined processing priorities of “humanitarian concern” to the U.S. Refugee Program.

<sup>3</sup>David A. Martin, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement* (July 2004), p. 72. (The report is available at <http://www.state.gov/documents/organization/36495.pdf>).

identify specific officials responsible for violations of religious freedom and report the names of these individuals to the Congress and in the Federal Register. To date, however, no individual officials responsible for severe religious freedom violations have been identified from countries of particular concern, in spite of these requirements. The Commission urges the Departments of State and Homeland Security to implement these provisions to identify and exclude those officials found responsible for severe religious freedom violations.

SECTION 605 OF IRFA: EXPEDITED REMOVAL STUDY UNDERTAKEN BY THE COMMISSION,  
DHS FAILS TO RESPOND TO TROUBLING FINDINGS

Mr. Chairman, I would like to raise one further set of issues that relate to the Department of Homeland Security's general failure to respond to the findings and recommendations contained in the Commission's study on asylum seekers subject to Expedited Removal. The Commission is convinced that, if carried out, these recommendations would allow Expedited Removal to protect our borders while at the same time protecting *bona fide* asylum seekers.

Section 605 of IRFA authorized the Commission to undertake a study on the treatment of asylum seekers subject to Expedited Removal. The study identified serious implementing flaws which place legitimate asylum seekers at risk of being returned to countries where they may face persecution. The study also found that *bona fide* asylum seekers were almost certain to be detained inappropriately by DHS under jail-like conditions and in actual jails.

The study identified these serious flaws within both the Executive Office for Immigration Review at the Department of Justice and the Department of Homeland Security. On January 9, 2006, the Attorney General launched his own comprehensive review of the immigration court system. Commission staff and the study experts have met with the leadership of that review, and it is our hope and expectation that the USCIRF study will receive due consideration.

The Department of Homeland Security, however, has yet to respond to the Commission or, as requested by the DHS Appropriations Subcommittee, to the Congress, regarding most of the findings and recommendations of the study to address these concerns.

One year after the release of the report, the Department did, in response to a key Commission recommendation, appoint a refugee and asylum policy coordinator—Igor Timofeyev. Also, late last month, the USCIS Asylum Corps issued guidance to address the Commission's findings relating to their role in credible fear determinations. The Commission looks forward to working with Mr. Timofeyev and other senior officials at DHS to address in a comprehensive way the findings and recommendations of the Commission's study.

Likewise, days prior to this hearing, the Asylum Corps within U.S. Citizenship and Immigration Services announced that it was amending its procedures for the Credible Fear determination process to address concerns identified by the USCIRF study.

The Commission remains concerned, however, that the Department of Homeland Security has expanded Expedited Removal, without addressing any of the substantive problems identified by the two enforcement agencies with roles in the Expedited Removal Process: Customs and Border Protection and Immigration and Customs Enforcement.

Indeed, the Commission is particularly concerned that DHS may be taking further steps with regard to Expedited Removal without taking into account the findings of the study.

The Office of the DHS Ombudsman recently proposed to shift certain Expedited Removal functions that are designed to protect *bona fide* asylum seekers from the USCIS Asylum Corps to personnel in the border protection and immigration enforcement agencies in DHS. This is despite the fact that USCIS was found by the USCIRF study to have far more effective quality assurance procedures than the other agencies. Moreover, the Ombudsman's extensive proposal neither mentions nor takes into account the Commission's study. The Commission urges that the findings of its study be taken into account by DHS in assessing the merits of the Ombudsman's proposal.

To conclude, Mr. Chairman, the United States has a proud tradition of offering refuge to those suffering religious persecution. Congress strengthened the U.S. Refugee Program when it enacted IRFA, and the Commission looks forward to continuing to work with you and the Subcommittee to ensure the full and fair implementation of IRFA's refugee and asylum provisions. Thank you again for the opportunity to testify, and I am happy to answer any questions.

Mr. TANCREDO. Thank you, Mr. Cromartie. As I understand it, that was sort of a combined presentation, so we can go right to questions, and that is why we certainly did not enforce that 5-minute rule. I will enforce it upon myself to the best of my ability.

In recent announcements that six North Koreans have been accepted into the United States as refugees, do you believe that this is a significant development? That is number one.

In your testimony, you mentioned that the commission is concerned about positions taken by DHS and DOJ attorneys regarding conditions in Iraq, and we would like you to elaborate on your concerns, and, finally, any further legislation necessary. Go ahead, please.

Mr. CROMARTIE. Yes, sir. Thank you. Well, first of all, let me just say, on the six North Koreans, it is a very significant development because these six are apparently the first North Koreans to be accepted as refugees into the United States, and, as you know, the intent of the North Korean Human Rights Act was to facilitate access of North Koreans to the U.S. Refugee Program, so this is very good news.

The commission found, during our visit to China last August and our recent study of conditions inside of North Korea, that North Koreans in China are routinely deported back by Chinese authorities without any opportunity to pursue an asylum claim, and, of course, as you know, once they are returned to North Korea, they face severe persecution for suspected contacts with foreign and political and religious influences outside of North Korea, and the consequences of their return are quite grave.

So while the Chinese Government would not likely provide the United States

with the necessary cooperation in this process, the North Koreans also live insecurely in other countries of first asylum, such as Russia and Thailand where the United States does have a refugee processing presence.

But let me just conclude by saying this about those six North Koreans: Their release as refugees is a very significant development and good news.

Mr. TANCREDO. How about Iraq?

Mr. CROMARTIE. Now, on these other questions, if I could turn to my colleague and let him have a moment.

Mr. TANCREDO. Mr. Stanhke.

Mr. STANHKE. Thank you. Regarding the Iraqis here in the United States and their treatment regarding asylum claims, there are two issues that have been brought to our attention that we have expressed concern about. The first is that immigration judges are increasingly adopting the position that the situation in Iraq has improved for members of religious minorities, in particular, the Chaldo Assyrian community, of which there are many here in the United States.

Now, the commission, in its own investigation, has highlighted, as well as the State Department in their human rights reports, that the situation for Chaldo Assyrian and for other vulnerable religious minorities in Iraq is really quite grave, and they are subject to targeted, religiously motivated attacks, as well as other actions that might be considered to be persecution.

So the information that we have received, particularly in relation to immigration judges in the Detroit area where a lot of these cases come up, the position, again, that is being adopted is that these people who are already here in the United States can now be sent back, given the overthrow of the Saddam Hussein regime.

The second issue relates to then when these cases get up to the Court of Immigration Appeals, which appears to be of two minds—one set of panels hold that, like the immigration judges, it is safe to go back; another set of panels seems to be holding consistently that it is not safe to go back. So this, again, is an issue where we think there should be greater coordination with the State Department over the conditions in Iraq, as well as pointing out the need for more training and quality assurance with respect to both the immigration judges and the BIA.

Mr. TANCREDO. Any suggestions for needed legislation?

Mr. STANHKE. The one suggestion that we have made in our written testimony and was highlighted by Michael was based on the Chairman's remarks regarding this *Li v. Gonzales* case, which is really quite troubling to the commission as well, that some of the players that were involved in that case are not subject to mandated training on religious persecution that is contained in IRFA, and these are the BIA and the Office of Immigration Litigation at the Department of Justice, and those are two parties who were very much involved in bringing forward these arguments that really contradicted United States foreign policy on human rights in China.

So we have recommended that IRFA require, at the very least, training of these individuals in both the BIA and the Office of Immigration Litigation, as well as, again, and this may not require legislation, but there is a process at the immigration judge level for State and the immigration judges to coordinate on asylum claims. But when the Li case came up, apparently at the appellate level in the BIA or in the Justice Department, there was no method of communication between the different agencies, and we have suggested that that be enhanced as well. Thank you.

Mr. TANCREDO. Thank you very much. Mr. Payne?

Mr. PAYNE. Thank you. Thank you very much. You have indicated, and as we know, there are three basic departments that are relatively involved in IRFA and the whole Religious Freedom Act: The Department of State, the Department of Homeland Security, and the Department of Justice. Which one of these departments seems to create the most bureaucratic—I have problems with all three of them, and they have problems with themselves, so to try to get the three to work together, I guess, is a nightmare.

Could you tell me where do you find, with all due respect to anybody from the Department of Justice who may be here or Department of Homeland Security or Department of State—you are just a messenger—could you tell me what seems to be the problem, and who do you think we ought to bring in here, maybe by themselves, and get the rubber hose and beat them over the head or something?

Mr. CROMARTIE. Yes, sir. Thank you. I will let my colleague, Mr. Stahnke, answer that question. As Chair of the commission, I will remain as bipartisan as possible.



Mr. PAYNE. All right.

Mr. STANHKE. Well, it is an interesting question, who might be the worst of those three. We have encountered bureaucratic difficulties with all three, as well as some areas of cooperation.

I think that the material support bar is one example of, as you say, where the three need to be working together, and in other areas that came up earlier today, especially where State and Homeland Security should be working together. That seems to be a theme of what we are looking at, areas where that sort of communication does not seem to be evident, as well as the case within the Department of State, where only recently have we seen the Bureau on Population and Refugees and Migration really talking, communicating with the International Religious Freedom Office, despite the fact that they are both involved in implementing the provisions of IRFA.

So our major issues are relating to State and the fact that training has not been done to the appropriate level for consular officials, and as far as Homeland Security is concerned, we are still hoping to have a response from that agency to our recommendations for the expedited removal study.

As Michael mentioned, we are very happy that they have appointed a senior coordinator for these matters because we have found that within the three different areas of DHS that have responsibility for asylum seekers and expedited removal, there was an inability among them to resolve differences. So every matter of difference between them, and there were many, had to be dealt with by the Secretary or the Deputy Secretary.

So we are hoping, with this new person in place, that they can begin to respond to some of the serious concerns that our study raised, and we would be happy to work further with the Subcommittee to see how Mr. Timofeyev is doing down the road in that regard.

Mr. PAYNE. Thank you very much. I think that, you know, if there was some way that we could sort of have not a formal hearing but just a roundtable discussion with you not to bash the agencies but to hear from you the problems and then see if there is some way that they can be worked out. I know that Homeland Security seems to have a lot of problems. I guess they are still in the process of forming themselves, but they tend to have more organizational problems in general. I am going to keep within the 5-minute rule that the ex-Chairman——

Mr. CROMARTIE. We would be glad to be part of such a meeting.

Mr. PAYNE. Yes. I think that would be great. The other thing: It seems that the immigration judges feel that it is, in my opinion, a defeat if someone is allowed to come into the country, you know, prove that they are really persecuted. It just seems to me that there is something radically wrong, and I cannot get over it. It just seems to be tilted so unfairly in the instances that I have heard.

A 13-year-old, mentally retarded youngster, Malik Jarno from Guinea; his parents were killed. He got here some way, was challenged, but he was being taken care of by the Quakers. They taught him the language. He was very appreciative for the opportunity to be here, and we had to just battle and battle and battle. They were going to send him back into the principal city in Guinea

in West Africa and let him get off the plane and, I guess, just look around and wonder what does he do next. The authorities killed his parents.

They were going to send him back to the authorities, a 13-year-old at this time—he was about 10 or 11 when that happened—somewhat challenged mentally, but he was functional, he was trainable, he was adjusted here, and we just had to keep fighting and fighting to let this one innocent boy stay here. The immigration judges did not want to hear anything to do with it.

Mr. CROMARTIE. Mr. Congressman, if I could, I just want to promote, if I could, the study that the commission and its staff came out with on expedited removal. It is a ground-breaking study, and it addresses these very concerns.

Mr. PAYNE. Really?

Mr. CROMARTIE. So if you have not seen a copy, I am sure our staff will be glad to give you one.

Mr. PAYNE. Thank you. I appreciate that. Thank you very much.

Mr. STANHKE. There are a couple of things directly related to what you say with regard to the immigration judges and the unfairness of the process. First is that we looked at the approval or denial rates of judges in the individual immigration courts, and it was extremely variable. So you might have in one court judges dealing with similar case loads, and individual judges could range anywhere from 5 percent overall grant rates to 95 percent, so it looked like an organ pipe.

So this is something that we have brought to Justice's attention and EOIR's attention to look further at. This was so statistically significant that it could not be explained by any of the factors that we were aware of, so that is one point.

The other thing that we found is that those who were represented by counsel had a much higher grant—for asylum and that this was a significant problem, especially in expedited removal work. People are being detained in facilities that are a long way away from metropolitan centers or access to legal representation. Now, fortunately, Justice and Homeland Security have already come up with innovative ways in which to get legal information to asylum seekers, and we have recommended that these programs that are proven to work and proven to be quite cost effective should be implemented throughout the country. That is another concrete step that can be taken to try to, as you say, balance out the fairness of the process.

Mr. PAYNE. Thank you very much. Thank you.

Mr. SMITH OF NEW JERSEY [presiding]. Thank you very much. I want to apologize. I have read your testimonies, but I was on the Floor giving a speech on one of the amendments, so I apologize for not being here.

Let me ask you a question, and Mr. Payne and I do share a concern about these so-called "detention centers" that really are jails. In the past, we have had people who were seeking asylum who were held for several years who were fleeing forced abortion in China. It got to the point where we had to subpoena the witnesses from Bakersfield to come here. When they came in, they were women in orange jump suits with chains, which I thought was absurd—a flight risk?—35-year-old women whose only crime was they

were seeking to protect their child from coercive population control in China.

I remember Henry Hyde was sitting—he was a Member of our Subcommittee, then-Chairman of the Judiciary Committee—he was aghast, as was I, and I said, “Well, this is my courtroom now, so the chains and everything else come off.”

Since then, we have looked into these detention centers. You looked into one in Broward County that you said may have been a bit different, if not profoundly different. I think that is a whole area, and we will devote a hearing to that, because these are jails. You might want to elaborate on Broward County, if you do not mind, because that seemed to be secure, as you point out, but did not have the jail-like appearance, at least if I read this correctly.

Secondly, about the commission recommendations; how well or poorly were they received by the Department of Homeland Security and by Justice? Your commission, and I applaud you with the highest accolades I can think of, is doing exactly—when Frank Wolf and I and others worked on that legislation that created IRFA, and parenthetically, as I pointed out earlier, it was opposed by the then Administration on the record by witnesses who came to the committee and said they did not want it. John Shadegg, others, used to come, and they did not want it, but in a bipartisan way, we got it passed, and President Clinton ultimately signed it because we did find that over and over again.

I remember, in the 1990s, Frank Wolf and I and others going to places like Romania and elsewhere and finding that religious persecution was just looked askance by many of our otherwise fine and reputable people in our Embassies, with one big exception—Dennis doing human rights work in Romania. That is why we immediately seized upon the opportunity to get him as a fellow here. There were some who saw it for what it was, but many others who just did not want to be bothered, particularly at the appointed level like Ambassador level.

So how has this been received? With that, I would ask unanimous consent that the executive summary of this report be made a part of our record.

[The information referred to follows:]

STUDY ON ASYLUM SEEKERS IN EXPEDITED REMOVAL  
*As Authorized by Section 605 of the International Religious Freedom Act of 1998*

STATISTICAL REPORT ON DETENTION, FY 2000-2003

FEBRUARY 2005

Special Tabulations Prepared with Assistance from the  
U.S. Department of Homeland Security,  
U.S. Bureau of Immigration and Customs Enforcement -  
Office of Detention and Removal Operations (ICE-DRO)

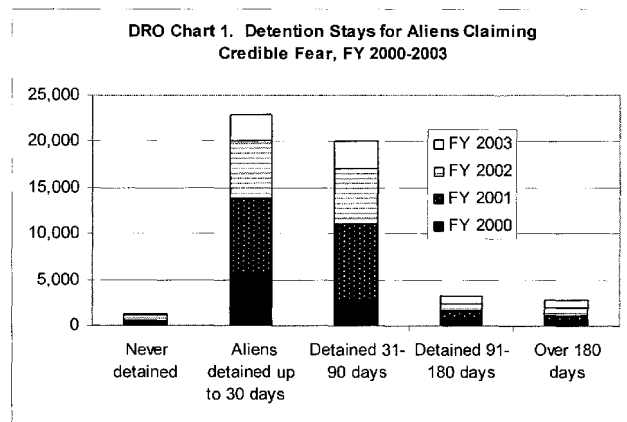
Assembled and Introduced by Cory Fleming and Fritz Scheuren  
NORC University of Chicago

## Special Tabulations Prepared with Assistance from the U.S. Department of Homeland Security

### DESCRIPTIVE SUMMARY

This Report consists of a compilation of special tabulations produced with assistance from the Office of Detention and Removal Operations (DRO) within the U.S. Department of Homeland Security. The tables and charts included here were designed as background for the Study of Asylum Seekers in Expedited Removal (the Study) being undertaken by experts designated by the U.S. Commission on International Religious Freedom (the Commission), pursuant to section 605 of the International Religious Freedom Act of 1998 (IRFA).

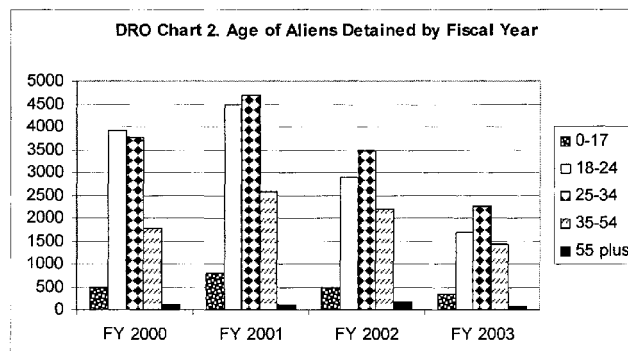
The tabulations are quite extensive, and some explanation of them is appropriate. Table 1, summarized in DRO Chart 1 (below), shows the total number of aliens in detention after being referred for credible fear interviews rose from FY 2000 to FY 2001, and then dropped in FY 2002 and again in FY 2003.



*Based on DRO Table 1.*

The DRO Table 2 series shows the total number of aliens referred for credible fear interview at a U.S. port of entry (POE) and denotes the country of citizenship. The People's Republic of China leads the list of countries of citizenship for all four fiscal years studied. As all aliens awaiting credible fear determinations must be detained by law, the finding that between 193 and 489 aliens were "not detained" each year is likely due to DHS data entry (or other) error.

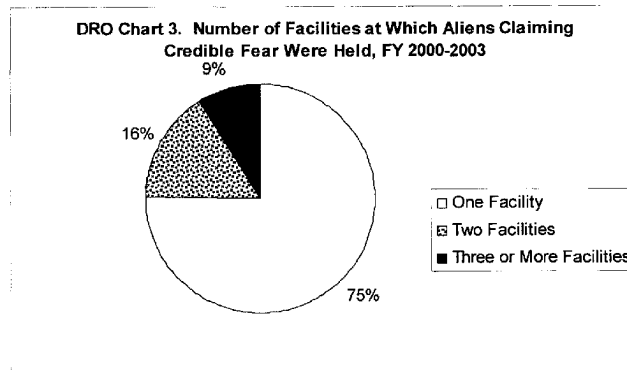
The DRO Table 3 series, as summarized by DRO Chart 2 below, examines the age and gender of aliens referred for a credible fear interview at POEs who were detained. Not unexpectedly, the largest number of aliens being detained after being referred for a credible fear interview fell into the 25-34 age cohort, followed closely by the 18-24 age cohort.



*Based on DRO Tables 3.0-3.2.*

The DRO Table 4 series looks at the type of detention facilities where aliens are placed, including service processing centers, federal prisons, state and local jails and contract facilities. DHS is increasingly utilizing private contract facilities to detain asylum seekers subject to Expedited Removal proceedings, and decreasing its reliance on state and local jails.

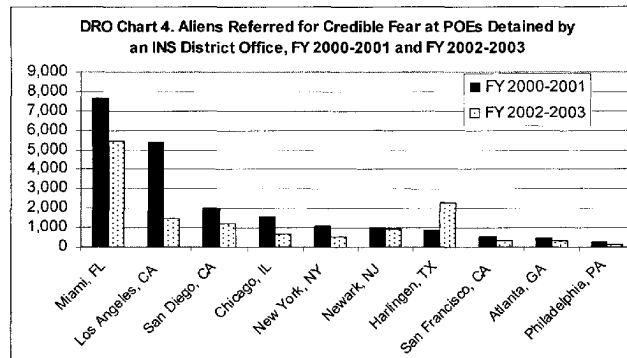
The DRO Table 5 series, summarized in DRO Chart 3 below, details the number of facilities an alien referred for a credible fear interview may stay in during the asylum process. Over the course of four years (FY 2000-2003), the vast majority of detainees stayed in only one facility; however, a significant number (about 9 percent) were held in three or more facilities.



Based on DRO Tables 5.0-5.3.

The DRO Table 6 series shows the length of detention stay for aliens referred for a credible fear interview. While most detainees are held less than 90 days, the average length of stay is considerable. In FY 2003, it was over two months (64 days) overall.

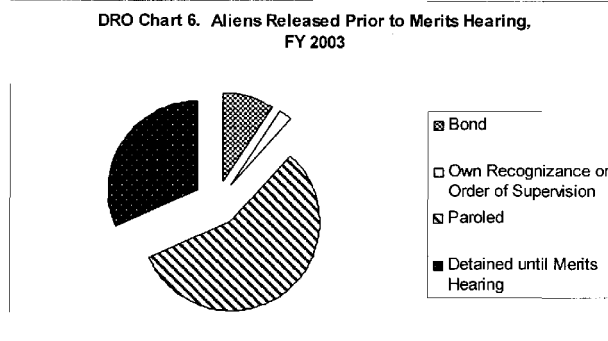
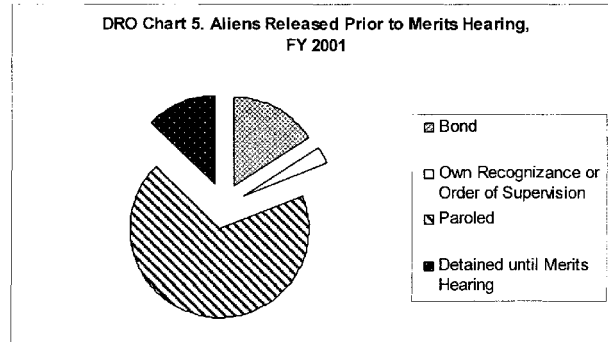
The DRO Table 7 series, as illustrated by DRO Chart 4 below, demonstrates that all major DHS Districts - except Harlingen, Texas - detained fewer aliens referred for credible fear in FY 2003 than in FY 2001. Los Angeles stands out, where the number of asylum seekers detained declined by more than 90 percent between FY 2001 and FY 2003.



Based on DRO Tables 7.0-7.3.

The DRO Table 7 series, as illustrated by DRO Charts 4, 5, 6 and 7, further examines the type and rate of release for aliens referred for a credible fear determination. In the aggregate

over FY 2000-2003, the INS District Offices in Miami and Los Angeles have the highest caseloads of aliens referred for credible fear who are detained. Of those POEs with the heaviest volume of credible fear referrals, Harlingen, Texas was the only site with an increase in comparing pre- and post- 9/11 case loads.



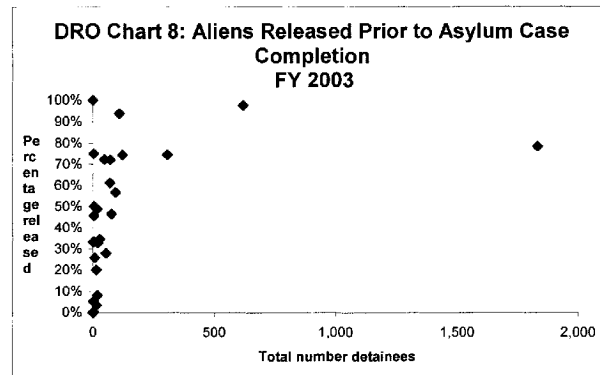


Most interestingly, DRO Chart 7 shows the significant disparity among INS districts regarding the release of asylum seekers subject to Expedited Removal. In FY 2001, while 86 percent of aliens were released from detention prior to their asylum hearing, two districts, Harlingen and Los Angeles, released 98 percent of asylum seekers, while Honolulu, Newark and Houston released fewer than 20 percent. After 9/11, however, the national release rate dropped by 27 percent, with only 62.5 percent of asylum seekers released prior to their asylum hearings in FY 2003. That year, Harlingen was still releasing almost 98 percent of asylum seekers prior to hearing, but Los Angeles was releasing only 30 percent. New Jersey released even fewer asylum seekers than before (less than 4 percent). New Orleans released the smallest percentage of asylum seekers of the major districts, releasing only 0.5 percent of asylum seekers from detention (down from 71.1 percent in FY 2001). DRO Chart 8 shows the variation in these release rates for FY 2003.

**DRO Chart 7. Aliens Released Prior to Immigration Judge's Final Decision on Asylum Claim  
Comparison of FY 2001 to FY 2003**

INS District Office	FY 2001			FY 2003		
	Released *	Held *	%	Released	Held	%
Miami, FL	4,966	156	97.0%	1,835	502	78.5%
Los Angeles, CA	2,722	56	98.0%	76	179	29.8%
San Diego, CA	969	73	93.0%	305	98	75.7%
Chicago, IL	659	35	95.0%	120	28	81.1%
Harlingen, TX	293	6	98.0%	620	15	97.6%
San Francisco, CA	264	58	82.0%	93	67	58.1%
Philadelphia, PA	192	94	67.1%	71	44	61.7%
New York, NY	149	397	27.3%	18	197	8.4%
Atlanta, GA	125	112	52.7%	55	139	28.4%
Newark, NJ	77	397	16.2%	14	377	3.6%
Washington, DC	58	36	61.7%	21	42	33.3%
Boston, MA	58	15	79.5%	3	6	33.3%
Detroit, MI	50	15	76.9%	6	6	50.0%
El Paso, TX	39	37	51.3%	47	16	74.6%
New Orleans, LA	32	13	71.1%	1	190	0.5%
San Juan, PR	30	8	78.9%	70	27	72.2%
St. Paul, MN	19	22	46.3%	0	2	0.0%
Buffalo, NY	17	24	41.5%	18	15	54.5%
Baltimore, MD	14	22	38.9%	2	34	5.6%
Phoenix, AZ	13	42	23.6%	27	48	36.0%
Houston, TX	10	58	14.7%	14	54	20.6%
Seattle, WA	9	30	23.1%	9	22	29.0%
Dallas, TX	8	22	26.7%	5	6	45.5%
Portland, OR	5	2	71.4%	2	0	100.0%
San Antonio, TX	3	1	75.0%	109	7	94.0%
Honolulu, HI	2	9	18.2%	1	2	33.3%
Denver, CO	2	3	40.0%	3	1	75.0%
Portland, ME	2	3	40.0%	NA	NA	NA
Cleveland, OH	1	0	100.0%	0	1	0.0%
Helena, MT	0	2	0.0%	0	1	0.0%
Omaha, NE	0	0	NA	NA	NA	NA
Kansas City, MO	NA	NA	NA	0	4	0.0%
<b>TOTAL</b>	<b>10,788</b>	<b>1,748</b>	<b>86.1%</b>	<b>3,545</b>	<b>2,130</b>	<b>62.5%</b>

\* **Released** is defined as those aliens released on bond (BOND), own recognizance (OR), or paroled (PARO). **Held** is defined as aliens Not Released/Unknown, Departed (DEP), Voluntary Departure (VD), and Case Terminated (TERM). The percentage was calculated using  $N = \text{Released}$  and  $D = \text{Released} + \text{Held}$ . Aliens who withdraw their application for admission or dissolve their asylum claims before an asylum officer (WITH), are released into the custody of the U.S. Marshals Service (USM), or are released under order of supervision (OS) have been excluded from these statistics. (See DRO Tables 7.0-7.3 for further information.)



Based on DRO Tables 7.3.

The DRO Table 8 series breaks aliens referred for credible fear interview into two categories, “detained at some point” and “not detained.” According to the Table 8 series, between 2.4 percent and 5 percent of aliens referred for credible fear were “never detained.” According to DHS, these statistics are probably the result of data input error, as aliens referred for credible fear must, by law, be detained until the time of their credible fear determination.<sup>1</sup>

#### SOURCES AND LIMITATIONS OF THE DATA

No integrated statistical reporting system on detention currently operates with the U.S. Department of Homeland Security. Different field offices use different data management systems, and the interoperability among these systems is not always apparent. In some offices, paper systems for counting applications are still maintained. The efforts to convert these operational detention systems to a single unified information system appear to be still in their infancy in many places.

<sup>1</sup> While detention of all aliens referred for credible fear is mandatory, there were significant discrepancies in FY 2003 between statistics kept by CBP in PAS (Performance Analysis System) and statistics kept by ICE in its APSS (Automated Prisoner Scheduling System) database. According to PAS, in FY 2003 there were 1408 aliens in Hidalgo, Texas referred for a credible fear interview. According to APSS, however, there were only 833. Similarly, according to PAS, in Brownsville, Texas there were 2613 aliens referred for credible fear interviews in FY 2003. According to APSS data, there were only 1956. The DHS Office of Immigration Statistics reports that these discrepancies are largely attributable to local ICE decisions not to detain Cubans subject to Expedited Removal. DHS has informed us that Cuban nationals subject to Expedited Removal are now being detained up until their credible fear hearing. Since the Cuban nationals who were not detained were never entered into the APSS database, however, they are not among the aliens counted in Table 8 series as having been “referred for credible fear but not detained.”

Mr. CROMARTIE. Thank you. Well, I will let Mr. Stahnke address some of those questions. I would just say that the Broward County Detention Center, in our study, we point out is the exception to the rule, and it is unfortunate that the other detention centers do not follow their model because it was the one place that was not a jail-like facility; it was humane. It was unfortunate that in the study more places like that were not found.

Mr. STANHKE. If I could just add briefly, we also found that the expense for the Broward County facility was completely in line with the average expense that DHS was paying for, as you say, in jails or jail-like facilities. I think that our commissioners that visited there and who had visited other facilities, it was a palpable difference in that the people that were housed there were relating to one another, were relating to them as visitors. This was not the case. So you have a situation where the conditions of confinement were really having an impact on the populations that were there, and this is something that is discussed extensively in our report.

If I could just add on the second question, we did cover that a bit in our testimony, but I would just like to emphasize that the Department of Homeland Security has not responded to our Commission, despite saying that they would, with respect to our recommendations. There are a couple of recommendations that they have moved forward on, but the vast majority, they simply have not, nor have they responded. Also, the DHS Appropriations Subcommittee has asked them officially as well to respond. That deadline passed months ago, and now, with this new coordinator on board at DHS, we hope that that is going to change, but, of course, any help that the Subcommittee could provide in that I think would be quite useful.

Mr. SMITH OF NEW JERSEY. We will do that, and thank you. Your exemplary work should not go without real answers, and hopefully those answers will be part of the cure and part of the reform, because we have identified so many important issues here.

Let me just ask one final question. Is the United Nations taking religious persecution seriously? UNHCR, especially, if you could speak to that issue.

Mr. STANHKE. Well, with regard to the UNHCR, one initiative that they have done over the last couple of years is that they recognized the need to develop guidelines for their refugee adjudicators on religious persecution claims, and they actually reached out to us, as well as others in the U.S. Government, as well as NGOs in the United States, in a collaborative effort to develop those guidelines. The guidelines actually provide good guidance, we think, to people who are charged with dealing with these difficult questions. So that is the one area that we know of where the UNHCR has actually done something.

Mr. SMITH OF NEW JERSEY. Did they reach out to Homeland Security?

Mr. STANHKE. Yes, they did, the INS at the time.

Mr. SMITH OF NEW JERSEY. Okay.

Mr. STANHKE. They did, and some INS people were involved in that.

The other areas of the United Nations and their human rights structures; obviously, that is a big issue at the moment. We saw,

as you mentioned, that the new Human Rights Council has a number of CPC countries as members, which is really quite striking and an unfortunate thing. We have not particularly noticed that the prior Human Rights Commission or the Office of the High Commissioner has been particularly vigorous in the area of religious freedom, but, again, we have not studied that carefully.

Mr. SMITH OF NEW JERSEY. Mr. Cromartie and Mr. Stahnke, thank you for your testimonies and, above all, thank you for the work you do on behalf of persecuted religious believers the world over. I appreciate it.

Mr. CROMARTIE. Thank you, Mr. Chairman, for your encouragement.

Mr. SMITH OF NEW JERSEY. I would like to now ask our final panel to come to the witness table, beginning with Anastasia Brown, who is the Director of Refugee Programs, Migration, and Refugee Services at the U.S. Conference of Catholic Bishops. Ms. Brown also served as the NGO Co-Chair of two joint U.S. Government/Refugee Council USA working groups: The East Asia Pacific Regional Workgroup and the Misrepresentation/Fraud Workgroup.

We will then hear from Ms. Limón, who is the President and CEO of the U.S. Committee for Refugees and Immigrants. Prior to coming to that organization in 2001, Ms. Limón was Director of the Center for the New American Community, a project of the National Immigration Forum. Ms. Limón is the recipient of several awards, including the UN Association of the National Capital Area Human Rights Award.

Then we will hear from Mr. Kenneth Bacon, who has served as the President of Refugees International since 2001. Prior to this, he served as the Assistant Secretary, Public Affairs, at the U.S. Department of Defense and served as Pentagon spokesman. From 1969 to 1994, he was a reporter, editor, and columnist for the *Wall Street Journal*. He is a member of the Council on Foreign Relations and the International Institute for Strategic Studies. Mr. Bacon has published articles and Op-Ed pieces on humanitarian issues in a number of publications, including the *International Herald Tribune* and the *World Policy Journal*.

Ms. Brown, if you could begin.

**STATEMENT OF MS. ANASTASIA BROWN, DIRECTOR OF REFUGEE PROGRAMS, U.S. CONFERENCE OF CATHOLIC BISHOPS (MRS/USCCB)**

Ms. BROWN. Thank you, Mr. Chairman. I would like to thank you for the opportunity to provide testimony today. The written testimony submitted on behalf of the U.S. Conference of Catholic Bishops contains more information regarding the U.S. Refugee Program, including funding shortfalls, infrastructure to identify refugees, and the situation of vulnerable groups, including unaccompanied minors, Cubans, Haitians, and North Koreans.

I will focus my oral remarks today on one of the most devastating issues ever to face refugee resettlement, and that is the issue of material support. As we have heard, the Secretary of State exercised authority to determine that material support bar is inapplicable to Karen refugees in the Tham Hin camp who may have provided support to the Karen National Union. This is very wel-

come news, but it is only the beginning. The current decision applies only to one particular group of refugees in one camp, and the reality is that the situation calls for a much larger response. The refugees in Tham Hin and the situation they fled from in Burma are well known to this Administration, and yet it took many, many months of high-level, interagency discussions for this decision to be made.

This interagency process is unwieldy, inefficient, and not a viable process when refugee lives are at stake. One can only imagine how difficult it would be for an individual refugee to make it through this process. The stories of individuals placed on hold for this provision continue to grow, and they are heart rending. I wish I could say, as you alluded, that they may have been exaggerated, but they are not. Examples of other refugees impacted by this law include Burmese Chin in Malaysia, who continue to live on the edge of society with little or no protection. They have been tortured and abused by the Burmese military, often for a perceived connection to the Chin National Front, and ironically the United States is holding the same thing against them.

Last week, we were told Malaysia deported approximately 30 of these refugees, including several pregnant women, all of whom had already been registered with the UNHCR. The NGOs on the ground report that the men in this group were beaten prior to their deportation, and yet the UNHCR remains unable to refer Chin refugees to the United States because of the material support bar.

Last week, there were reports of thousands more Karen being forced to flee their villages as the Burmese army forced them out and threatened to kill anyone left behind. There are already more than 100,000 refugees in the camps in Thailand, and yet this current decision only applies to those in the Tham Hin camp.

In West Africa, women and children who were raped and mutilated, whose families were killed in front of their eyes, who were held captive in their homes and kidnapped are being held under this bar because they "housed" or "provided services," which they did not do, to members of the terrorist organization. The victim is being held as an accomplice to the crime.

Similar stories come from Colombia, Liberia, Sierra Leone, Cuba, Sudan, Vietnam, and the list continues to grow. We are now seeing persons granted asylum in the United States and refugees who have already been resettled here unable to adjust their status to that of permanent residents. During the adjustment, the material support provision is now being invoked. Hmong and Montagnards who supported those fighting with the United States during the Indo-China conflicts are now seeing their applications put on hold.

The UNHCR has stated that a referral to the U.S. program may, in fact, jeopardize the protection of a refugee overseas. Normally, if the country who they refer to declines to accept a refugee, the UNHCR can refer them to one of the other settlement countries, but, unfortunately, if the U.S. has labeled somebody a security risk, and I would remind us again of a woman raped and held in her own house who poses no threat to anyone, another country cannot consider them. The country where the refugee has a temporary asylum may deport this refugee as a security risk or place them in high-security detention.

In addition to the issue of individual referrals, the U.S. program relies heavily on group referrals. The refugees in Tham Hin camp are, in fact, group designated. The UNHCR, however, indicates that they may find it very difficult to make new group referrals until the issue of material support is resolved.

Over the past 2 years, the refugee program began a recovery from the terrorist acts of September 11. At the start of the year, the Department of State was confident they could process 60,000 refugees. Funding shortfalls forced them to cut their target to 54,000, and we are now faced with delays surrounding the issue of material support, and the target is below 46,000.

With no new groups on the horizon and hesitance by the UNHCR to make referrals, the number of refugees available for processing will soon be depleted. Very soon, we could once again see a program which could only accommodate 20,000 to 30,000 arrivals every year while survivors of terrible atrocities languish in uncertainty. What message are we sending to the perpetrators of these atrocities? What message are we sending to the victims of human rights abuses throughout the world?

We ask that the Administration offer guidance that would allow adjudicating officers to make decisions on the applicability of the material support bar to individual refugee and asylum claims without the need for high-level, interagency agreements on each case. We ask for guidance to be issued on what actually constitutes membership in such a group.

Mr. Chairman, if this law is written in such a way that it forces reasonable people to make unreasonable decisions, then I would submit that there may be something wrong with the language of this law, and it should be adjusted. The Administration and the Congress should move immediately to correct the damage caused by this change in the law and the resulting bar on material support. These changes were ill-considered.

Moreover, they can be interpreted in this overly broad manner, resulting in the possible denial of refugee protection to many deserving, bona fide refugees. Thank you.

[The prepared statement of Ms. Brown follows:]

PREPARED STATEMENT OF MS. ANASTASIA BROWN, DIRECTOR OF REFUGEE PROGRAMS,  
U.S. CONFERENCE OF CATHOLIC BISHOPS (MRS/USCCB)

I am Anastasia Brown, director of Refugee Programs for Migration and Refugee Services of the U.S. Conference of Catholic Bishops (MRS/USCCB). MRS/USCCB is the largest refugee resettlement agency in the United States. Working with over 100 Catholic dioceses across the nation, we provide resettlement assistance to approximately 15,000 to 20,000 refugees each year, helping them with job placement, housing, and other forms of assistance to ensure their early self-sufficiency.

I would like to thank Subcommittee Chairman Christopher Smith, as well as Ranking Member Donald Payne, for the invitation to speak to you today about refugee and asylum protection issues. MRS/USCCB believes that this is a vital area in which the United States holds an honored tradition as a safe haven for those who flee persecution and terror. We believe that the United States can meet its national security protection goals without jeopardizing this honored tradition of welcoming refugees, asylum-seekers, and other vulnerable populations to our shores.

As we have heard today, there are many challenges which confront the U.S. refugee program, particularly in the post September 11, 2001, world. Today, I recommend four steps that the United States should take to address the needs of refugees around the world so that durable solutions can be found to resolve their plight:

- The Administration and Congress should move immediately to correct the damage caused by recent changes in law relating to material support. These

changes were ill-considered. Moreover, they can be interpreted in an overly-broad manner, resulting in the possible denial of refugee protection to many deserving, bona fide refugees;

- The United States should increase funding for humanitarian assistance and resettlement assistance to the more than 13 million refugees in the world, including Cubans and Haitians who flee persecution just off U.S. shores;
- The United States should take steps to meet the annual refugee ceiling by making systemic changes to enhance and expand the U.S. admissions program;
- The United States government should pay immediate attention to special refugee populations, including Cuban and Haitian entrants; North Korean refugees fleeing their oppressive government; and Burmese refugees in Southeast Asia.

#### THE ISSUE OF MATERIAL SUPPORT

The Immigration and Nationality Act (INA) prohibits granting refugee status to anyone who is a terrorist or supports terrorist activity. This prohibition is needed to ensure national security and to prevent the extension of refugee protection to those who are undeserving of protection.

However, recent legislation, including the USA Patriot Act and the REAL ID Act, expanded and broadened this law in ways that have had an unintended, negative impact on bona fide refugees. For example, the USA Patriot Act expanded the reach of the terrorism definition by broadening grounds of inadmissibility to anyone who provides “material support” to groups which engage in “terrorist activity.” This includes groups who use weapons or “dangerous devices” with the intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property, for any motive other than “mere personal monetary gain.” Moreover, the REAL ID Act expanded the definition of “non-designated” terrorist organization to include a “group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in “any form of terrorist activity.”

These changes were ostensibly designed to protect the United States from genuine terrorist threats. However, they have had the effect of excluding refugees and asylum-seekers who have been victims of terrorism or brutal regimes from U.S. protection. Many Burmese refugees, for example, who have fled religious persecution, have been impacted by the Administration’s delay in interpreting this law because they may have contributed to ethnic or religious organizations that may be associated with sub-groups that oppose the repressive Burmese authorities. Providing any assistance to these organizations can render a person inadmissible under the law, even if they were forced under “duress.”

As written, the law is so broad that it harms any individual who provides even a glass of water, a bowl of rice, or a place to sleep to a member of an organization involved in the defense of that individual against a regime which is actively involved in ethnic cleansing. In one case, a woman who offered two tins of rice to the resistance army, who lost her husband in the conflict and was systematically raped by the Burmese army, would be deemed inadmissible under this provision. There are other compelling cases which demonstrate that the material support bar should not apply to this vulnerable population as well.

This bar to admissibility is having a profound impact on the Burmese refugee population as a whole. For example, the United Nations High Commissioner for Refugees (UNHCR) referred to the United States 9,463 ethnic Karen refugees from Burma currently located in the Tham Hin refugee camp in Burma. In addition, the UNHCR in Malaysia has referred 3,000 ethnic Chin refugees living in Malaysia to the United States. However, the resettlement of some in these groups is in jeopardy, pending the release of guidance by the Department of Homeland Security regarding the interpretation and implementation of the definitions in the PATRIOT and REAL ID Acts.

Last week, the Department of State exercised its discretionary authority to determine that the material support bar is inapplicable to ethnic Karen refugees in the Tham Hin camp. We are grateful for this determination. However, the process of consultation for this one group took more than 6 months, and the waiver was unable to provide relief to many in the camp. Meanwhile, Karen refugees with similar claims in other camps cannot be considered, nor can Chin refugees in Malaysia be processed either.

From our perspective, the material support bar should not apply to the situation of the Burmese refugees. In order to solve this problem without changing existing law, DHS should develop a legal interpretation of “material support” which is in line



with a plain reading of the statute and exclude actions which are made under duress or could not constitute support because payments were insignificant. DHS also should quickly establish a process for facilitating the admission of refugees and for granting asylum when the circumstances under which the alleged support was provided was involuntary, inadvertent, or otherwise excusable—such as when the support is provided to a group that is not designated as a terrorist group and is in fact engaged in protecting the victims of a brutal and repressive regime. These actions would allow for the application of individual determinations of admissibility by DHS officers not only to refugee cases, but also to individual asylum cases in the United States. It also would obviate the need for a cumbersome inter-agency waiver determination to be made in each instance a refugee group is being considered for resettlement in the United States.

Further, we urge Congress to revisit the law and adjust the material support provisions in the REAL ID Act and the PATRIOT Act to minimize the impact to bona fide refugee groups around the world.

Mr. Chairman, with your permission I would like to submit for the record principles developed by Refugee Council USA, the nation's leading coalition of refugee resettlement, human rights, and humanitarian organizations, which we believe should govern DHS interpretation of the material support law.

#### U.S. FUNDING FOR OVERSEAS HUMANITARIAN ASSISTANCE AND REFUGEE RESETTLEMENT

As you know, Mr. Chairman, the number of refugees around the world remains at around 13 million, many of whom are residing in deplorable conditions in refugee camps, with little hope for improving their situations or for obtaining a durable solution to their plight. Sufficient funding is needed to ensure that their basic humanitarian and resettlement needs are met.

We are deeply concerned about FY 2006 funding for refugee resettlement and protection. The FY 2006 budget appropriations for refugee programs falls far short of meeting the need. At least \$220 million more is needed to meet overseas assistance and resettlement needs this year.

We are also concerned about funding levels for Fiscal Year 2007, which the House of Representatives will soon consider. The Administration has proposed \$834 million for Migration and Refugee Assistance, \$55 million for the Emergency Refugee and Migration Assistance (ERMA) account, and \$ 615 million for the Department of Health and Human Services' Office of Refugee Resettlement (DHHS/ORR). These totals are insufficient to meet the needs of refugees both abroad and in the United States. To achieve this end, we recommend at least \$1.2 billion for the MRA account, at least \$55 million for the ERMA account, and at least \$798 million for the Department of Health and Human Services' Office of Refugee Resettlement (DHHS/ORR), and sufficient funds for other essential refugee related budget items.

Without an increase in federal funding, the Administration will not be able to continue to revive the U.S. refugee program to provide the durable solution of resettlement to more refugees. An MRA total of \$1.2 billion would provide \$333 million for the United States to admit 90,000 refugees in FY 2007. Additionally, this overall MRA funding level would provide \$780 million to enhance our overseas assistance funding to a level that could meet more of the desperate needs. This MRA figure would also allow the other two items within MRA—aid to refugees resettling in Israel and the administrative costs of the State Department's refugee bureau—to be funded at expected levels.

Increased funding for refugee protection is essential to avoid massive shortfalls in food, medicine and other vital supplies that continue to affect refugees across Africa and elsewhere. It would also support the work of international relief organizations—including those that fund U.S.-based charitable agencies—that are providing humanitarian assistance and protecting refugees from further harm. This funding level for overseas assistance would reverse the effects of inflation and other cuts and would facilitate the United States' continued leadership in refugee assistance and protection.

DHHS/ORR's ever-expanding mandate requires at least \$798 million for FY 2007. Of this amount, \$397 million would be available for transitional, medical services to refugees and the Match Grant program, which leverages private sector funds to help refugees reach rapid self-sufficiency. \$187 million would be provided for Social Services to help fund ethnic community based organizations, vulnerable populations programs, and community integration projects to provide assistance for up to 100,000 refugees, asylum-seekers, and Cuban-Haitian entrants. A total of \$798 million for ORR would also allow \$21 million for human trafficking programs and \$30 million for programs under the Torture Victims Relief Act.

Additionally, the Homeland Security Act of 2002 required ORR to take on the duty of caring for the more than 7,000 unaccompanied alien children who come into federal custody each year. We believe that DHHS/ORR's new responsibility for unaccompanied alien children will require at least \$105 million in FY 2007.

In addition to the refugee program functions in the Departments of State and HHS, sufficient funding is needed for the Department of Homeland Security to adjudicate refugee claims and ensure that appropriate security measures are undertaken in the U.S. refugee program. Among the most important new initiatives that should receive direct funding is the Refugee Corps within the Bureau of Citizenship and Immigration Services. We urge that \$20 million be available for the Refugee Corps. Also, the DHS Bureau of Customs and Border Protection must be provided with sufficient resources to inspect and admit refugees, as well as to fulfill statutory requirements that Employment Authorization Documents be provided to refugees upon entry, in a manner that does not restrict refugee admissions or unduly increase the per capita costs charged to the State Department's refugee budget.

Finally, sufficient USAID and other US foreign assistance funding should be requested for services to internally displaced persons, torture victims, trafficking victims, and other victims of conflict, disasters, and oppression worldwide.

#### SYSTEMIC CHANGES TO ENHANCE AND EXPAND THE U.S. ADMISSIONS PROGRAM

As I mentioned, Mr. Chairman, a new world order trying to preserve and sustain refugee protection requires the United States to reach out to refugees in "hot spots" across the globe, such as Africa, Latin America, South and Southeast Asia, and portions of Europe. To serve the refugees in these areas of need, more tools are required to build the capacity of the admissions program to identify, process, and resettle refugees from various parts of the world.

Refugee Council USA has developed a series of recommendations to help build the capacity needed to meet these new challenges, which are detailed in our interim report.

Mr. Chairman, many of these recommendations have already been endorsed by Congress and enacted into law. The FY 2004 Consolidated Appropriations bill called for several reforms to the refugee admissions program, including the following:

- Using private voluntary organizations in the identification, referral, and processing of refugees for admission to the United States;
- Prioritizing female head-of-households, unaccompanied children, long-stayers, and urban refugees outside of traditional camp settlements for resettlement; and
- Making the P-3 family reunification category available to all nationalities.

Mr. Chairman, we urge you and your colleagues on the subcommittee to press the Administration to implement these recommendations immediately. Without building the capacity to identify and resettle refugees in need, we are concerned that the admission of refugees into the program will remain at the low levels of the past two years.

For purposes of today's hearing, I would like to further highlight a few of our recommendations.

#### *Enhancing Referral Capacity*

In recent years, the State Department has relied heavily on UNHCR to refer vulnerable refugees to the U.S. admissions program for resettlement. As noted in the recent report titled, *UNHCR Projected Global Resettlement Needs 2005*, the UNHCR faces many constraints in providing adequate resettlement referrals for refugees in need of protection. Additional avenues for referrals must be created so that more vulnerable populations and individuals have access to the U.S. program.

First, the State Department should look to non-governmental organizations that work with refugee populations as an avenue for referral. Non-governmental organizations, including Joint Voluntary Agencies (JVAs) and Overseas Processing Entities (OPEs), which prepare cases for review by DHS, are uniquely positioned to provide referrals because of their daily work with refugee populations.

While the State Department has operated small referral and NGO training programs in Nairobi, Kenya and Ghana, it has yet to expand the program to other regions. Even as the State Department has taken steps during the last several years to expand its capacity to identify and process refugees for resettlement, not a single JVA/OPE has been developed to assist in these efforts. During this same period, there have been several locations that could have benefited from the presence of a JVA to identify refugees for resettlement.

In addition, U.S. embassies should be given greater authority to identify and refer refugees to the U.S. program. In a recent report to Congress, the State Department indicated its intent to authorize embassy referrals for individual protection cases. We urge that this authority be extended so that embassies may identify and refer groups of refugees as well.

*Building Capacity to Identify and Process Refugees*

Another area of concern is the ability of the U.S. government to identify and process refugees for the U.S. program. Our government, including the Department of Homeland Security, should make more efforts to create a "pipeline" of refugees for resettlement that is continually filled. The State Department must be more proactive in identifying refugee populations for the succeeding years, so that there is at least a three-month pipeline of "travel-ready" refugees. We recommend several additional tools to achieve this goal.

First, we recommend that the State Department and the Department of Homeland Security create "Rapid Response Teams" which would field NGO experts on a regular basis to analyze the resettlement needs of refugee populations and help establish initial processing mechanisms to identify and refer cases for U.S. admissions consideration. These teams would be deployed in areas of extreme need and would work with State Department officials on a regular basis to ensure that NGO efforts, which would supplement the work of UNHCR and PRM, are consistent with accepted standards for assessing the suitability of persons for resettlement.

We are pleased that a Refugee Corps has been created within the Department of Homeland Security. We are concerned, however, that the Administration continues to pay for the Refugee Corps through immigration user fees. As mentioned, we urge Congress to provide \$20 million in funding for the Refugee Corps through the annual appropriations process and general revenues.

Finally, Mr. Chairman, Congress passed legislation in 2001 which requires the Department of Homeland Security to issue Employment Authorization Documents (EADs) to refugees upon their arrival at ports-of-entry into the United States. Currently, only 35 EADs are being issued per plane. We ask you to urge DHS to implement this provision of law by issuing EADs to all refugees upon their arrival in the United States. A proposed solution to issue EADs through the Nebraska Service Center after entry leaves refugees without work authorization for months and, in our view, does not meet the requirements of the law.

*Expanding Access to the U.S. Refugee Program*

To reach the most vulnerable of refugees, the State Department should expand access to the program for certain categories of refugees who currently do not have channels into the U.S. program. In the last several years, the State Department has limited the processing categories available for resettlement, relying primarily on the P-1 category for emergency needs. We recommend an expansion of the P-2 and P-3 categories.

The P-2 category allows for the resettlement of special groups designated to be of interest to the United States. The State Department has shown a willingness to expand the number of P-2 groups, but has not yet significantly done so. In the past year, only two new groups have been designated for processing. One unfortunate impact of the material support bar is that UNHCR is unwilling to expand group referrals until the situation is resolved. This results in even more reliance on NGO and U.S. government identification of groups.

We also recommend expanding the P-3 category, which prioritizes family members for resettlement, to all nationalities. While the State Department has expressed public support for this concept, it has recommended only twenty nationalities, while MRS/USCCB resettled refugees from 37 nationalities in FY 2005. Moreover, Liberia was pulled from the list of eligible nationalities because refugees are being encouraged to return home. However, many of these refugees are vulnerable, have nothing to return to, and would be better served by reunification with their families in the United States. The absence of a "universal" P-3 has the effect of channeling more refugee claims to an overburdened UNHCR and contributes to misrepresentation in the program. Family relationships and reunification should remain a cornerstone of the U.S. refugee program.

Finally, the State Department should place a priority on responding to the needs of special populations of refugees. As a first step, the State Department should identify groups of unaccompanied refugee children for resettlement in the United States. In the past few years, less than 100 unaccompanied refugee children have been resettled in the United States. In their recent report to Congress, the State Department conceded that more progress must be made in this area.

We recommend that the State Department deploy NGO specialists to conduct best interest determinations for groups of unaccompanied refugee children. We also recommend that special guidelines be developed for the processing of unaccompanied and separated children, including a processing priority designation. In addition, groups such as women at risk, long-stayers, urban refugees, and victims of torture, should be given special consideration.

“WET FOOT/DRY FOOT” POLICY IMPACTING CUBAN REFUGEES

Mr. Chairman, we would also like to comment on the long-established U.S. policy toward Cuban refugees who arrive in the United States by boat and reach land. Cubans who are able to escape repression in Cuba and reach U.S. soil—hence the term, “dry feet”—are granted asylum and, under the Cuban Adjustment Act of 1966, are able to adjust their status to permanent resident in one year. While we do not disagree with the treatment of Cubans who reach land under this policy, we disagree that other vulnerable Caribbean-based populations, such as Haitians, often are not afforded a real opportunity to establish their asylum claim while on land or when interdicted on the high seas.

We would support a consistent asylum policy for Cubans, Haitians, and other vulnerable refugee populations who reach land and are interdicted off U.S. shores—namely, an opportunity to have their asylum claims heard by a qualified adjudicator or immigration judge. Such a consistent policy is needed for Haitian refugees, who often face similar circumstances as Cubans, but are not treated similarly.

*The Cuban-Haitian Entrant Program*

Once Cubans and Haitians arrive in the United States, it is vital that they receive appropriate services to help them integrate into local communities. The Cuban-Haitian Primary/Secondary Entrant Program (CHPSEP), which is funded through the Department of Homeland Security, provides integration services to these populations, including employment, counseling, and housing assistance. The program has successfully integrated thousands of Cuban and Haitian entrants for the past twenty-five years, but, because it is funded through user fees and not an annual budget appropriation, has been plagued with inconsistent funding.

Over the past several years, nongovernmental organizations who help operate the program, including MRS/USCCB and Church World Service (CWS), have either had to provide their own funds to continue operations or suspended activity altogether. We urge the subcommittee to work with their colleagues on the appropriations committee to establish an annual line-item for this program in the federal budget funded through general revenues. This would provide the stability to ensure that Cuban and Haitian arrivals are provided the services they need to successfully integrate and contribute to their new country.

A recent obstacle to the resettlement of Cubans in the United States has been the issuance of 9-digit alien identification numbers to Cubans who arrive in Miami through the Cuban visa lottery program. This is a problem because the Miami office of the U.S. Citizenship and Immigration Service (USCIS) can only process employment authorization documents for Cubans with 8-digit alien identification numbers. As a result, the processing must be completed at the Nebraska processing center, which can take several weeks for completion. In the interim, Cuban refugees have resided in a Miami hotel at government expense and have been unable to search for employment and begin integrating into local communities. We urge USCIS to address this problem as soon as possible.

NORTH KOREAN REFUGEES IN CHINA

The U.S. Catholic bishops remain concerned with the plight of North Korean refugees escaping persecution, including religious persecution, in their homeland. In 2004, members of the U.S. Bishops' Committee on Migration visited China to investigate circumstances surrounding North Korean refugees in China. The same concerns which were troubling then still exist today—namely, that North Korean refugees are not afforded protection in China and must live underground or escape to a third country such as South Korea in order to avoid being returned to North Korea to certain incarceration and even death. In our view, the world community can no longer allow for this situation to continue in the future. In this regard, we recommend that the U.S. government strongly encourage the Chinese government to provide refugee status to North Koreans fleeing persecution in their homeland and to permit, where appropriate, North Korean refugees to be resettled in a third country, including the United States.

The U.S. government should offer resettlement to this population and should encourage other countries, such as South Korea, to offer resettlement to this vulner-

able population as well. While we were encouraged to see that six refugees from North Korea entered the United States last week, the need is far greater. Finally, UNHCR should designate North Korean refugees as in need of protection.

#### BURMESE REFUGEES IN SOUTHEAST ASIA

Another vulnerable population affected by the material support issue and other protection issues are Burmese refugees in Southeast Asia. I think it is important to note that the entire population of uprooted Burmese currently stands at an estimated 1.5 million. Of that total, as many as 800,000 are internally displaced within Burma, while about 700,000 are refugees located in neighboring countries. Thailand hosts the largest population of Burmese refugees and asylum seekers, and I will speak more about those shortly.

Of the neighboring countries, Bangladesh hosts about 150,000 Burmese refugees, mostly ethnic Rohingya. Of those, only 20,000 are in the two camps operated by the UNHCR, while the rest are outside the camps with no official status and living in difficult conditions. About 60,000 ethnic Chin from Burma live in Mizoram State, which is located in the eastern half of India. India considers this population to be illegal and will not grant UNHCR access to them. Smaller number of Burmese Chin and other ethnic minorities live as urban refugees in New Delhi and are extremely marginalized and vulnerable. MRS/USCCB and other refugee organizations have long advocated for the resettlement of the Burmese in New Delhi, but with no success.

An estimated 25,000 Burmese refugees and asylum-seekers, mostly ethnic Chin and Rohingya, live in Malaysia, and they, too, live in extremely difficult conditions. While the United States has committed to resettling several thousand Chin from Malaysia, the need is far greater than the 3,000 the UNHCR agreed to refer to the United States, and those plans are now in jeopardy because of the "material support to terrorists" grounds of inadmissibility. Meanwhile, the refugees in Malaysia are being detained, beaten, and deported.

Finally, several thousand Burmese are seeking asylum in countries outside the region, including the United States and other industrialized countries. While the United States has traditionally granted protection to significant numbers of Burmese each year through our asylum system, our continued ability to do so is also threatened by the issue of material support and by new asylum standards established by the REAL ID Act of 2005.

As I stated, Thailand hosts the majority of Burmese refugees. According to recent statistics, more than 450,000 refugees and asylum-seekers reside in Thailand. Of those, 142,917 live in 9 camps along the Thai-Burma border, most of which are of the Karen and Karenni ethnic groups. According to UNHCR, 100,840 refugees in the camps are registered, and 36,874 are unregistered, which means that the Thai government does not "officially" recognize these refugees.<sup>1</sup> This includes about 8,000 unaccompanied minors living in camps, a group that I will discuss in greater detail later. There are also an estimated 200,000 ethnic Shan refugees living in Thailand with no legal protection and no access to the camps. The remainder of refugees in Thailand is Karen/Karenni refugees living outside camps in various rural and urban settings.

#### THE OPTION OF THIRD COUNTRY RESETTLEMENT FOR BURMESE REFUGEES

There are three durable solutions for refugees in the world: 1). repatriation to their home at such time as it is safe to return; 2). permanent resettlement in the country of first asylum; and 3). resettlement to a third country. Because of the ongoing civil war in Burma, which has lasted for over twenty years, it is highly unlikely that large scale repatriation will occur in the near future. For political and economic reasons, the Thai government and the governments of other neighboring countries have been unwilling to permanently accept the Burmese refugee population. The only real solution to the plight of many of the Burmese refugees is resettlement to a third country, such as the United States. This option would provide them an opportunity to start their lives and the lives of their families anew.

The Thai government has recently shown a willingness to consider third country resettlement for the Burmese refugee population in their country. The United States government, through the Office of Population, Refugees, and Migration (PRM), has recognized that repatriation to Burma and permanent resettlement in Thailand are not possible at this time and has agreed to consider resettlement for approximately

<sup>1</sup> Registration is an important element of refugee protection in Thailand, as it allows refugees legal protection and the right to remain in the country. In addition, it allows for an exit permit to be granted if a refugee is invited to resettle in a third country.

9,463 refugees in the Tham Hin camp west of Bangkok. Since a waiver for this group has been approved, these refugees could be resettled in the United States during the current fiscal year. While the State Department has now authorized discretion to allow for processing of this camp, the UNHCR will not be able to refer refugees in other camps for consideration until the material support issue is addressed more comprehensively. The government's overly broad interpretation of this law is likely to bar the admission of most of the Burmese refugees currently being considered for resettlement, even though these refugees are not terrorists and are in fact victims of a brutal regime who urgently require protection.

#### THE PLIGHT OF BURMESE UNACCOMPANIED REFUGEE MINORS

Within the Burmese refugee population are thousands of unaccompanied refugee minors (URMs). URMs are defined as children who are not currently living with their parents or primary care givers when they became refugees. In reality, these children have lost their parents, some of whom have been killed in the conflict. These children have languished in camps for years and have no access to education beyond the tenth grade. They have little hope for their future and face the prospect of living in refugee camps most of their lives.

According to the UNHCR, there are approximately 8,000 Burmese unaccompanied refugee minors in Thailand and an untold number in Malaysia. In Thailand, these children live in the border camps in a variety of arrangements, including in boarding houses, with blood relatives, with non relative foster care families, or on their own.

In Malaysia, a smaller number of Burmese URMS of teenage age live in the jungles outside Kuala Lumpur. These teenage boys eke out an existence by working at local construction sites or in other menial jobs. They have no access to education and no future other than what they currently know.

MRS/USCCB believes that URMs are particularly vulnerable and, under certain circumstances, should be given the opportunity to escape the imprisonment of refugee camps and start a new life in a new country. Burmese URMS, many whom know only life in a refugee camp, should be considered for resettlement in the United States. In order to achieve this end, we make the following recommendations:

- Child welfare experts should be deployed to camps in Thailand to assist in the development and implementation of protocols for serving URMs, including conducting more comprehensive and ongoing best interest determinations (BIDs) and establishing oversight mechanisms to ensure appropriate child welfare conditions in the camps;
- Active tracing efforts should be ongoing within Thailand, including in the camps and in major urban areas;
- For URMS whose BIDs indicate such, resettlement should be pursued expeditiously;
- UNHCR should ensure that no URMs are living in the camps without proper adult guardianship. UNHCR, with U.S. assistance, should develop educational programs to allow young boys and girls to continue their education; and
- In Malaysia, UNHCR should deploy child welfare experts to make BIDs for ethnic Chin teenage boys living in the Malaysian jungle.

#### CONCLUSION

Mr. Chairman, we appreciate the opportunity to testify today on the many challenges facing refugees and asylum-seekers who attempt to find protection in the United States. It is clear that we live in a new world in which our nation must remain vigilant against outside threats. However, we have the capability to protect the American public without sacrificing our traditional role as a safe haven for the oppressed of the world.

The recommendations we have outlined are a road map for ensuring that our nation can meet the goals of national security and refugee protection. We urge you, Mr. Chairman, as well as your colleagues on the subcommittee, to seriously consider these recommendations and to continue to work on behalf of refugees and other vulnerable populations who look to the United States as their last hope.

Thank you.

Mr. SMITH OF NEW JERSEY. Thank you so very much, Ms. Brown. Ms. Limón?

**STATEMENT OF MS. LAVINIA LIMÓN, PRESIDENT, U.S.  
COMMITTEE FOR REFUGEES AND IMMIGRANTS**

Ms. LIMÓN. Good afternoon, Mr. Chairman. Thank you for the opportunity to testify today about the plight of refugees around the world.

We concur with you and with our colleagues about the negative effects of the material support provisions on refugees who are fleeing terror for freedom and safety. We also concur that the basic needs of refugees are inadequately supported by the international community and encourage U.S. leadership to enlist greater commitments from other nations and to expand our own contributions.

This afternoon, I would like to focus my testimony on the 99.5 percent of the world's refugees who will never come to the United States or have an opportunity to be resettled in any other country, the eight out of 11.5 million refugees who have been warehoused without their basic human rights for 5 years or more.

Mr. Chairman, it has been 2 years since the U.S. Committee for Refugees and Immigrants launched our antiwarehousing campaign focusing on the forgotten rights of refugees in the 1951 Refugee Convention. For 2 years, we have been saying that denying refugees the right to work, earn income, go to school, own property, and move freely is wrong.

The 1951 convention envisioned a refugee protection regime based on human rights principles, not a perpetual aid delivery system that functioned best when refugees are confined and dependent. We took a close look at the 1951 convention and were, frankly, a little surprised to find out that the word "camp" does not appear in the entire document. It is a little amusing when "refugee camp" seems to be one word, but we thought about it, and we decided that it does make sense. After all, in 1951, what was the world's most recent experience with people in camps? It was, in fact, Hitler and Stalin. So camps were not entertained as an enlightened humanitarian response to a humanitarian emergency.

But as time went on, camps became the most expedient way to deliver assistance to a large number of people in an emergency setting. Now, long after an emergency is over, refugees remain dependent on that aid delivery system, 14 years after Somali refugees fled to Kenya, many remain in Kakuma camp, 12 years since the Burundians fled to Tanzania, 20 years since the Burmese fled to Thailand. And one refugee from Kakuma, who USCRI resettled in Vermont, likened the camp to "a storage place where they kept human beings."

The 200,000 Sudanese refugees from Darfur who now have lived in Chad for approximately 2 years are now, in fact, growing impatient with the stagnant nature of camp life. One refugee said, "We are in prison. It is time to start thinking of a life beyond the camp." Another one recently asked a reporter, "Are they going to leave us like this forever? Will we just rot here like our animals?"

Mr. Chairman, we are not saying that camps are bad. We are saying that tying humanitarian assistance to camp residence is essentially requiring refugees to forfeit their basic human rights.

The good news is that conceptually there is widespread agreement among assistance agencies, donor countries, and a number of host governments, and the UNHCR that warehousing is wrong,

that refugees deserve opportunities for self-sufficiency. Over 359 NGOs, human rights organizations, academics, and notable individuals, including six Nobel laureates, have signed onto our "Statement Calling for Solutions To End the Warehousing of Refugees," which is attached for the record.

The World Refugee Survey has been a major tool of the antiwarehousing campaign, compiling key statistics on the situation.

We have also noticed that recently many refugees have decided to demand better protection and the ability to determine their own future. The most publicized event was the violent eviction of 2,000 Sudanese in Cairo who led a 3-month sit-in protesting the abrupt end to refugee status determinations. Twenty-eight died, and hundreds were injured. "I just wanted to live with dignity," said one refugee whose daughter was killed by Egyptian police. "That is all I wanted."

When a delegation from ASEAN visited the largest Burmese refugee camp along the Thai border, refugee elders held up signs that read: "We have been here long enough." Primary school children stood at attention and asked the delegation, "Think about our future."

How has the international community responded to the protests demanding a better way of life? How have they moved forward with a widespread agreement on antiwarehousing principles? Unfortunately, the international community continues to reinforce the status quo.

Recently, UNHCR has urged self-settled Congolese refugees in Burundi to move to camps in order to receive assistance. Plans for the residual caseload of Burmese refugees in Tham Hin camp who will not be resettled to the United States is another example. The Thai Government, together with UNHCR, has decided to build a new camp for the remaining Tham Hin population. The Swiss Government has funded an engineer to lay out the land and make recommendations for its infrastructure.

Last year, Congress took a step in the right direction by passing an amendment to the Fiscal Year 2006 Foreign Operations Appropriations Bill requesting the State Department to designate some of its funds to developing effective responses to protracted refugee situations. To date, no funds have been directed toward this purpose, and the status quo prevails without U.S. leadership.

Mr. Chairman, in another 10 years, I can testify before you that millions of refugees continue to live in crowded conditions where they are not allowed to cultivate their own food or earn income from their labor. I could report 10 years from now that refugees still live off the inadequate food rations, that blue tarps and white tents are still permanent homes for refugees, that we are still trucking in water and digging wells for refugees in inhospitable living conditions. Then would we still consider ourselves leaders in refugee protection? Will we have made the most of the trillion dollars in appropriated funds spent between now and then?

Mr. Chairman, I envision a future in which the U.S. Government and the international community have a clear policy delineating the type of assistance appropriate in emergencies versus long-term settings when only rights-based protection leading to self-reliance



is acceptable. I envision a future where host governments allow refugees to become productive members of the society that has granted them temporary stay. While they are yet refugees, they can live to their full potential, awaiting a durable solution with human and material resources to bring back to their home country when it is safe.

In short, Mr. Chairman, I envision a future in which a 55-year-old law is respected and implemented. Thank you, and I look forward to your questions.

[The prepared statement of Ms. Limón follows:]

PREPARED STATEMENT OF MS. LAVINIA LIMÓN, PRESIDENT, U.S. COMMITTEE FOR  
REFUGEES AND IMMIGRANTS

Mr. Chairman, thank you for the opportunity to testify today about the plight of refugees around the world. This hearing comes at an important time when, we believe, the war on terror is challenging our commitment to refugee protection, the humanitarian needs of refugees far outweigh our appropriations, and refugees around the world are taking action and demanding freedom and a better way of life.

We concur with our colleagues about the negative effects of the material support provision on refugees who are fleeing terror for freedom and safety. We also concur that the basic needs of refugees are inadequately supported by the international community and encourage U.S. leadership to enlist greater commitments from other nations and to expand our own contributions.

I would like to focus my testimony on the 99.5 percent of the world's refugees who will never come to the United States or be resettled in another country, the 8 out of 11.5 million refugees who have been warehoused.

Mr. Chairman, it has been two years since USCRI launched its anti-warehousing campaign focusing on the forgotten rights in the 1951 Refugee Convention. For two years we have been saying that denying refugees the right to work, earn income, go to school, own property and move freely is wrong.

The 1951 Convention envisioned a refugee protection regime based on human rights principles, not a perpetual aid delivery system that functioned best when refugees were confined and dependent. We took a close look at the 1951 Convention and were surprised to find that the word 'camp' does not appear in the entire document. This makes sense. After all, when the Convention was written, who had been putting people in camps? Hitler and Stalin. So camps were not entertained as an enlightened humanitarian response.

But as time went on, camps became the most expedient way to deliver assistance to a large number of people in an emergency setting. Now, long after an emergency is over, refugees remain dependent on that aid delivery system. Fourteen years after Somali refugees fled to Kenya, many remain in Kakuma Camp. One refugee from Kakuma who USCRI resettled in Vermont likened the camp to "a storage place where they kept human beings."

Long after an emergency is over, a host government can refuse to let refugees move outside the camp, making camps places of permanent residence. As attention wanes on a particular population, so does donor commitment, leading to reduced food rations in camps where refugees have no right to cultivate land, trade or sell goods in local markets. Twelve years after Burundian refugees fled to Tanzania, they are still unable to work or participate in local markets.

Host governments do not need to allow refugees to work or go to school as long as the international community will continue to house, feed and set up special programs. The Thai government has recently permitted Burmese refugees to take up vocational training activities inside the camps, but they are still not allowed to leave the camp premises or receive wages for their work. Refugee children who receive some education in the camps grow up without the hope of moving on to secondary education, without the hope of ever employing their knowledge.

The 200,000 Sudanese refugees from Darfur who have lived in camps in Chad for two years now are growing impatient with the stagnant nature of camp life. One refugee said "We are in prison. It is time to start thinking of a life beyond the camp." Another refugee recently asked a reporter, "Are they going to leave us like this forever? Will we just rot here like our animals?"

Congressman Smith, we're not saying that camps are bad. We're saying that tying humanitarian assistance to camp residence is essentially requiring refugees to forfeit their basic human rights.

The good news is that we have overcome the conceptual hurdle. There is widespread agreement among assistance agencies, donor countries and a number of host governments that warehousing is wrong, that refugees deserve opportunities for self-sufficiency. Over 359 NGOs, human rights organizations, academics and notable individuals, including 6 Nobel laureates, have signed on to our Statement Calling for Solutions to End the Warehousing of Refugees, which is attached for the record.

*The World Refugee Survey has been a major tool of the anti-warehousing campaign, providing key statistics on the situation of refugees around the world. For the first time last year we graded country performance vis-a-vis refugee rights. This helped focus our attention on countries with the most egregious record of violating refugee rights, as indicated in the attached list of best and worse countries for the record.*

Since we started the anti-warehousing campaign, many refugees have decided to demand better protection and the ability to determine their own future.

The most publicized event was the violent eviction of 2,000 Sudanese in Cairo—who led a 3 month sit-in protesting the abrupt end to refugee status determinations for Sudanese asylum seekers—28 died and hundreds injured. “I just wanted to live with dignity,” said one refugee whose daughter was killed by Egyptian police. “That is all I wanted.”

When a delegation from the Association of Southeast Asian Nations (ASEAN) visited the largest Burmese refugee camp along the Thai border, refugee elders held up signs that read “We have been here long enough.” Primary school children stood at attention and asked the delegation, “Think about our future.”

Refugees from Congo held a sit-in in front of UNHCR’s headquarters in the capitol city of Burundi protesting the requirement to go to insecure camps to get assistance. The refugees were afraid of moving into the camps because over 150 refugees in Gatumba Refugee Camp were massacred by rebels in a surge of ethnic violence in August 2004.

How has the international community responded to the protests demanding a better way of life? Despite widespread agreement on anti-warehousing principles, the international community continues to reinforce the status quo.

UNHCR has urged self-settled Congolese refugees in Burundi to move to camps in order to receive assistance. Just last Friday UNHCR sent a convoy of refugees from Bujumbura to a camp where they would be guaranteed assistance and more movement is expected to take place in the coming weeks.

Plans for the residual caseload of Burmese refugees in Tham Hin Camp who will not be resettled to the United States are another example of how the status quo is reinforced. The Thai government, together with UNHCR, has decided to build a new camp for the remaining Tham Hin population. The Swiss government has funded an engineer to lay out the land and make recommendations for its infrastructure.

How long will the remaining Tham Hin refugees live on international assistance in the new camp? We do not know the answer.

Today, we have a choice to make. We can make sure that refugees are able to exercise basic freedoms, or we can continue to perpetuate and support the status quo.

Last year, Congress took a step in the right direction by passing an amendment to the FY06 Foreign Operations Appropriations bill requesting the State Department to designate some of its funds to developing effective responses to protracted refugee situations, including programs to assist refugees outside of traditional camp settings that support refugees living or working in local communities. To date, no funds have been directed toward this purpose and the status quo prevails.

The State Department insists that providing basic needs and services to refugees is a higher priority than helping refugees become self-reliant. But if we continue to do the former without investing in the latter, there will never be change.

What can be done? We can make sure that refugees are not destitute and dependent on meager assistance for years to come. We can begin today by asking governments to consider policy alternatives, such as local hosting arrangements for residual caseloads, linking each refugee with a sponsor or community organization.

As an interim step, governments could develop regional refugee empowerment zones where refugees would be free to live, move and work. We can invest money in local employers, schools and clinics rather than building isolated educational and medical structures in the camps which separate refugees from the larger society.

Or, in another ten years I can testify before you that millions of refugees continue to live in crowded conditions where they’re not allowed to cultivate their own food or earn income from their labor. I could report ten years from now that refugees still live off of inadequate food rations; that blue tarps and white tents are still permanent homes for refugees; that we’re still trucking in water and digging wells for refugees in inhospitable living conditions.

Then, would we still consider ourselves leaders in refugee protection? Will we have made the most of the trillion dollars in appropriated funds spent between now and then?

Mr. Chairman, I envision a better future. I envision a future in which the U.S. government and the international community have a clear policy delineating the type of assistance appropriate in emergencies verses long-term settings. Care and maintenance saves lives in the short term but only rights-based protection leading to self-reliance is acceptable.

I envision a future where host governments allow refugees work permits and access to local schools. I envision refugees becoming productive members of the society that has granted them temporary stay. While they are yet refugees, they can live to their full potential, awaiting a durable solution with human and material resources to bring back to their home country when it is safe.

In short, Mr. Chairman, I envision a future in which a 55 year old law is respected and implemented.

Mr. SMITH OF NEW JERSEY. Thank you so very much. Mr. Bacon?

**STATEMENT OF MR. KENNETH H. BACON, PRESIDENT  
REFUGEES INTERNATIONAL**

Mr. BACON. Thank you very much, Mr. Chairman. I want to commend you for holding this hearing to review how U.S. leadership is protecting refugees around the world and to consider ways to expand those protections.

The number of refugees and asylum seekers declined to 11.5 million last year from a recent high of nearly 15 million at the end of 2001. The reason for the decline is that refugees go home when wars end, and the U.S. is playing a key role in helping to create conditions for refugee return around the world. Over 3 million Afghans returned home after the fall of the Taliban in 2001, and hundreds of thousands of refugees have returned to Angola, Liberia, and Sierra Leone.

Pressure from President Bush helped lead to the resignation of Charles Taylor as President of Liberia, paving the way for significant repatriation there. The United States role in promoting comprehensive peace agreement between north and south Sudan, as you noted earlier today, and the more recent participation in talks that led to a partial, but fragile, peace agreement for Darfur are also important, but we can do more.

Here are three things the U.S. can do to help win further reductions in the number of displaced people.

First, continue to intervene strategically to promote peace, as we have done in Sudan. United States leadership is playing a role in reducing a large displaced population in the Democratic Republic of the Congo and could play a larger role in northern Uganda.

Two: Provide adequate support to the UN High Commissioner for Refugees. UNHCR is playing a major role in orchestrating returns in southern Sudan and is about to take on a lead role in protecting large populations of internally displaced people in northern Uganda and the DRC, yet the United States contribution to UNHCR is declining, as you also noted in your opening statement.

Three: We should meet our obligations for funding UN peacekeeping operations. A recent study by the General Accountability Office explained that investments in UN peacekeeping operations make sense for the U.S. The U.S. provides 25 percent of the funds for UN peacekeeping operations, yet we are currently \$521 million behind in our commitment to support UN peacekeeping operations around the world.

A look at major displacement crises in Sudan, northern Uganda, and the DRC illustrates the results and the opportunities for United States leadership.

In Sudan, last year, United States diplomacy helped produce an agreement that ended a 21-year civil war between north and south. Some of the 4 million internally displaced and 500,000 refugees are beginning to return. A UN peacekeeping operation is slowly moving into place, and the UNHCR is supporting the returns.

In the Darfur region of west Sudan, fighting has recently gotten worse. Last week's intervention by Deputy Secretary of State Zoellick helped produce a peace agreement between the Government of Sudan and one of three rebel factions. Yesterday, Secretary of State Rice told the UN Security Council that a large and strong UN peacekeeping force will be necessary to enforce the agreement, which we hope will expand over time.

The stakes are high, not just for the people of Sudan but for the entire region. Instability and violence in Darfur have already spread to Chad, and for years Sudan has supported and sheltered the Lord's Resistance Army, a vicious rebel group that has terrorized northern Uganda. You probably saw the story in the *Washington Post* this morning about a young lady who was abducted as a child soldier at age 15, Grace Akalo. The LRA is also launching attacks in southern Sudan, where UN peacekeepers need to do more to protect returnees as well as humanitarian workers.

In northern Uganda, 20 years of war have displaced up to 2 million people who live in fear of the Lord's Resistance Army. This war has had a particularly devastating impact on children. More than 25,000 have been abducted by the LRA and turned into fighters or sex slaves. United States leadership is essential for ending this nightmare.

The United States is one of Uganda's larger donors and a permanent member of the UN Security Council. Therefore, it has a critical role to play in protecting Ugandan citizens from further violence and in bringing about a political solution to this crisis. The United States should press the Government of Uganda, which has failed to protect and assist its citizens, to provide humanitarian services, protection, and reconciliation.

In addition, the United States should support the strengthening of UN peacekeeping missions in Sudan and the DRC to ensure that they have the resources and the mandate to protect civilians from the LRA, disarm LRA fighters, and capture indicted commanders. The United States must also make it clear to the Government of Sudan that relations between Washington and Khartoum cannot improve until Sudan expels the LRA.

I have a series of other recommendations in my written statement, but I will skip them here just to accelerate.

In the Democratic Republic of the Congo, after nearly a decade of violence, there is finally some good news. Conditions are improving. The country is preparing to hold its first democratic elections in 45 years. Some of the 380,000 Congolese who have sought refugee status in neighboring countries are beginning to return, and about half of the 3.5 million internally displaced people in the DRC have returned home. United States leadership has created a useful political dialogue to address political, security, and humanitarian

challenges on a regional basis. The promising transformation will not succeed unless the U.S. remains involved.

Working with other donors, the U.S. must ensure that funds are readily available to fill the gaps in community-level, reintegration assistance. Adequate support of UNHCR, which has a new mandate to protect internally displaced people in the DRC, and the World Food Program are particularly important.

The Congolese state and its national army are currently too weak to guarantee security. MONUC, the UN's largest peace-keeping operation, is the only force capable of imposing a measure of control on the chaotic military system in the Congo. MONUC presence and patrolling have helped create a more secure environment for humanitarian operations and allowed increased access to groups in need. The U.S. must continue to support MONUC at current troop levels for at least 1 year beyond the end of its current mandate on September 30, 2006. There is continued talk that the U.S. wants to reduce its contribution to MONUC. This would be the wrong time to do that.

Statelessness has been covered earlier, but I would like to reiterate some of the comments that Representative Watson made. There are 11 million stateless people. They lack passports necessary for travel. Often they cannot work legally. They cannot receive health and other benefits or send their children to school.

I urge the Committee to hold a dedicated hearing on stateless persons. International attention and pressure is the key to winning citizenship for stateless populations. Syria has already agreed to consider several hundred thousand stateless Kurds within its borders, but it has not moved forward on that. We do not have a lot of leverage with Syria, but still I think public attention would help move them forward. Also, Bangladesh may be on the verge of considering a way to resolve the problems of several hundred thousand stateless Baharis within its borders.

I would like to talk very briefly about Burma. The brutal policies of religious and ethnic repression there continue to generate a steady flow of refugees. The United States has little leverage over Burma, but it is in a position to resettle groups of Burmese who cannot return home. But as my colleagues have elaborated, material support is making that very difficult by erecting barriers for refugees.

So it is very crucial that we pay attention to this and try to resolve the problem. As other witnesses have said, blocking resettlement of Burmese Chin, who suffer persecution because they are Christians, or Karen, who face violence because of their ethnicity and sometimes because of their religion, deprives persecuted people of an important human rights protection.

The Montagnards is an issue you raised, sir, and I hope you will continue pressing the State Department on that. It is a small population now of about two dozen people, maybe three dozen people, who have been rejected by UNHCR. In the past, the U.S. has reviewed those cases and in 75 percent of the cases granted them refugee status and resettlement opportunities in the United States. So I hope the same principle will apply this year that we used so successfully last year.

With that, sir, I will conclude my testimony and take questions.

[The prepared statement of Mr. Bacon follows:]

PREPARED STATEMENT OF MR. KENNETH H. BACON, PRESIDENT REFUGEES  
INTERNATIONAL

Chairman Smith, Representative Payne, Committee Members, I want to commend you for holding this hearing to review how U.S. leadership is protecting refugees around the world and to consider ways to expand those protections. I am Ken Bacon, the president of Refugees International, an independent advocacy group.

The number of refugees and asylum seekers declined to 11.5 million last year from a recent high of 14.9 million at the end of 2001. The reason for the decline is that refugees go home when wars end. The U.S. is playing a key role in helping to create conditions for refugee return around the world. Over three million Afghans returned home after the fall of the Taliban in 2001, and hundreds of thousands of refugees have returned to Angola, Liberia, and Sierra Leone.

Pressure from President Bush helped lead to the resignation of Charles Taylor as president of Liberia after he was indicted for crimes associated with his brutal rule, paving the way for significant repatriation there. The U.S. role in promoting the Comprehensive Peace Agreement between north and south Sudan and the more recent participation in talks that led to a partial, but fragile, peace agreement for Darfur are also important achievements. But there is more we can do.

Unfortunately, the population of displaced people extends beyond refugees. While there are 11.5 million refugees—people who have crossed an international border to escape persecution—there are currently some 21.3 million internally displaced people, according to comprehensive figures compiled by the US Committee for Refugees and Immigrants. Internally displaced people live in refugee-like conditions but have not crossed national borders. For example, about 200,000 refugees have fled to Chad to avoid the genocide in the Darfur region of Sudan, while nearly two million people are internally displaced in Darfur. There are large internally displaced populations in Sudan, Columbia, the Democratic Republic of the Congo, northern Uganda and Iraq. But internally displaced people also go home when wars end, as they have in Angola and are today in southern Sudan.

There are three things that the U.S. must do to help win further reductions in the number of displaced people:

1. Continue to intervene strategically to promote peace, as we have done in Sudan. U.S. leadership is also playing a role in reducing a large displaced population in the Democratic Republic of the Congo and could play a larger role in northern Uganda.
2. Provide adequate support to the UN High Commissioner for Refugees. UNHCR is playing a major role in orchestrating returns in southern Sudan and is about to take on a lead role in protecting large populations of internally displaced people in northern Uganda and the DRC, yet the U.S. contribution to UNHCR is declining.
3. Meet our obligations for funding UN peacekeeping operations. As a recent study by the Government Accountability Office explained, investments in UN peacekeeping operations make sense for the U.S. The U.S. provides 25% of the funds for UN peacekeeping operations, yet we are currently \$521 million behind on our commitment to support UN peacekeeping operations.

A look at major displacement crises in Sudan, northern Uganda and the DRC illustrates the results and opportunities for U.S. leadership.

SUDAN

Last year U.S. diplomacy helped produce an agreement that ended a 21 civil war between the government of Sudan and rebels in the South. Large numbers of the four million internally displaced and 500,000 refugees are beginning to return. A UN peacekeeping operation is slowly moving into place, and the UNHCR is supporting the returns.

In the Darfur region of west Sudan, fighting has recently gotten worse. Last week's intervention by Deputy Secretary of State Zoellick helped produce a peace agreement between the government of Sudan and one of three rebel factions. Yesterday, Secretary of State Rice told the UN Security Council that "the Darfur Peace Agreement is the foundation on which to begin building a future of freedom, security and opportunity for the people of Darfur." But she noted that the agreement can't succeed without UN peacekeepers to supplement a small African Union force in Darfur. "It is now more important than ever to have a strong United Nations effort to ensure that the agreement's detailed timelines are monitored and enforced.

The accord clearly states that neutral peacekeepers have an essential role to play in this process,” she told the Security Council.

The stakes are high, not just for the people of Sudan but for the entire region. Instability and violence in Darfur has already spread to Chad, and for years Sudan has supported and sheltered the Lord’s Resistance Army, a vicious rebel group that has terrorized northern Uganda. The LRA is also launching attacks in southern Sudan, where UN peacekeepers need to do more to protect returnees as well as humanitarian workers.

#### NORTHERN UGANDA

In northern Uganda, a 20 year war has displaced up to two million people who live in fear of the Lord’s Resistance Army. This war has had a particularly devastating impact on children—more than 25,000 have been abducted by the LRA and turned into fighters or sex slaves. U.S. leadership is essential for ending this nightmare endured by the people of northern Uganda.

The more than 200 camps in northern Uganda for displaced people are horrific. People do not have access to adequate health care, water, sanitation, education, or protection, and as a result almost 1,000 people are dying a week. The UNHCR has just been assigned responsibility for protecting the internally displaced people of northern Uganda, but the agency will need more funds to carry out its job.

The war in northern Uganda has spilled over into southern Sudan and eastern Democratic Republic of Congo. Regional peace and security are at risk. This war now threatens to undermine the fragile peace in Southern Sudan and destabilize the entire region. There are disturbing charges that members of the Sudanese government continue to support the LRA.

The U.S., one of Uganda’s larger donors and a permanent member of the UN Security Council, has a critical role to play in protecting Ugandan citizens from further violence and in bringing about a political solution to this crisis. The U.S. should press the Government of Uganda, which has failed to protect and assist its citizens, to provide humanitarian services, protection, and reconciliation.

In addition, the U.S. should:

1. Support the strengthening of the UN peacekeeping missions in the Sudan and the DRC to ensure that they have the resources and the mandate to protect civilians from the LRA, disarm LRA fighters and capture indicted commanders. Eighty percent of LRA fighters are abducted children, so the strategy against the LRA must focus on protecting them. The U.S. must also make it clear to the government of Sudan that relations between Washington and Khartoum can’t improve until Sudan expels the LRA.
2. Appoint a senior advisor to coordinate a peace process and request the UN Secretary General to appoint a high-level UN Regional envoy who can facilitate political initiatives to find a peaceful resolution to the conflict.
3. Support the appointment of a UN Panel of Experts to investigate the sources of support, including Sudan, for the LRA.
4. Allocate the necessary resources to increase support to displaced persons, including reintegration and reconciliation programs that emphasize community-based initiatives.

#### DEMOCRATIC REPUBLIC OF THE CONGO

After nearly a decade of violence that has led to some four million war-related deaths in the DRC, conditions are improving. The country is preparing hold its first democratic elections in 45 years. Some of the 380,000 Congolese who have sought refuge in neighboring countries are beginning to return, and about half of the 3.5 million internally displaced people in the DRC have returned home. U.S. leadership has created a useful political dialogue to address political, security and humanitarian challenges on a regional basis. The promising transformation won’t succeed unless the U.S. remains involved.

Expected increasing returns of refugees and internally displaced people will put significant pressure on existing, but fragile, community structures, possibly leading to tensions and conflicts. Working with other donors, the U.S. must ensure that funds are readily available to fill the gaps in community-level reintegration assistance. Adequate support of UNHCR, which has a new mandate to protect internally displaced people, and the World Food Program are particularly important.

The Congolese state and its national army are currently too weak to guarantee security. MONUC, the UN’s largest peacekeeping operation, is the only force capable of imposing a measure of control on the chaotic military system in the Congo. MONUC presence and patrolling have helped create a more secure environment for

humanitarian operations and allowed increased access to groups in need. The US must continue to support MONUC at current troop levels for at least one year beyond the end of its current mandate on September 30, 2006.

I want to touch briefly on four other displacement issues where American leadership is important—statelessness, Burma, the Montagnards from Vietnam and treatment of North Korean refugees.

#### STATELESSNESS

Last year Refugees International published *Lives on Hold: The Human Costs of Statelessness* to highlight the plight of an estimated 11 million stateless people. “Everyone has the right to a nationality,” states the Universal Declaration of Human Rights, yet Algeria, Bangladesh, the Dominican Republic, Estonia, Syria, Thailand, the United Arab Emirates, and many more countries contain populations of people who aren’t citizens of any country. As a result, they lack passports necessary for travel. Often they can’t work legally, receive health and other benefits, or send their children to school.

There are steps the U.S. can take to help generate protections for people who lack citizenship.

- First, I urge this committee to hold a dedicated hearing on stateless persons. International attention and pressure is the key to winning citizenship for stateless populations.
- Second, provide new funding at the necessary level to support UNHCR work on behalf of stateless people (currently there are only two full time staff members to aid 11 million stateless in over 75 countries).
- Third, designate at least one full-time point person at State Department’s Bureau of Population, Refugees, and Migration and at the Department of Human Rights and Labor to address statelessness. To her credit, Assistant Secretary of State Sauerbrey is taking an interest in this human rights issue.

#### BURMA

Burma’s brutal policies of religions and ethnic repression continue to generate a steady flow of refugees. We estimate that more than one million Burmese have fled to surrounding countries—Bangladesh, India, Thailand and Malaysia. The U.S. has little leverage over Burma, but it is in a position to resettle groups of Burmese who can’t return home. However, the new security provisions of the USA Patriot Act and the Real ID Act have erected barriers to resettlement for refugees who may have been forced to support rebel groups, even those fighting a government in Burma that the U.S. opposes. As other witnesses have said, blocking resettlement of Burmese Chin, who suffer persecution because they are Christians, or Karen, who face violence because of their ethnicity and sometimes because of their religion, deprives persecuted people of an important human rights protection.

The waiver for Karen at the Tham Hin refugee camp in Thailand is only a start and doesn’t deal with the fundamental problem. In the meantime, refugee admissions are lagging and are likely to fall way below the goal set by President Bush.

#### MONTAGNARDS

Montagnards continue to leave Vietnam to escape persecution there. Some of the persecution is based on religion, and some of the persecution is based on their demand for economic and land rights, or on the Montagnard community’s alliance with the U.S. during the Vietnam war. Last year, the UNHCR, Cambodia, and Vietnam signed an agreement providing for the screening and possible third country resettlement of Montagnards. Over the last few decades, the U.S. has resettled thousands of Montagnards, and we continue to do so.

In 2005 UNHCR cleared hundreds of Montagnards for resettlement, but it rejected about two dozen. The U.S. reviewed those cases and offered to resettle about 75% if those who had been denied refugee status by UNHCR. This year the U.S. is facing the same opportunity to review cases that UNHCR has rejected for resettlement. There are credible reports that some Montagnards who leave Vietnam and then return face persecution when they go home. Therefore, fairness, consistency and our commitment to protecting people from persecution argue that the U.S. should continue to review the cases of Montagnards rejected for resettlement by UNHCR.



## NORTH KOREA

RI welcomes the possibility of U.S. resettlement options for North Korean refugees. But the country of first asylum, China, limits the work of organizations trying to assist these asylum seekers; prevents UNHCR from accessing asylum seekers; and prevents US officials from interviewing them. The UN High Commissioner for Refugees has recently taken up this matter directly with the Chinese authorities, but he needs backing from major donor countries, such as the United States. Is the US engaging directly with the Chinese on this issue at senior levels? The public record is not clear. We encourage Congress to push this issue with the Administration.

I would be glad to answer questions these or other topics.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Bacon, and thanks to all three of you for your testimonies and your fine work.

Let me just ask Ms. Limón, on the issue of warehousing, and our other two witnesses might want to speak to it. It is a dilemma, a Catch 22 in many ways. I have been in refugee camps all over the world, and very often the host country for the camp is none too pleased that refugees are there in the first place. I remember going to Stankovich in Macedonia, and, thankfully, those people did end up going back to Kosovo, but at the time there were real tensions between the Kosovar folks and the Macedonians about that camp. It has been the same everywhere else. In Chad, there is also a great deal of tension.

I remember the CPA when there was this aggressive attempt by the previous Administration to just send everybody back, and the international community had that fatigue which we so often see. Clean out the camps, send them all back whether they are economic migrants or truly refugees. I offered the amendment to rescreen them. It passed in the House, much to all of our surprise, and that led to the Rover program. But I say that because there seems to have been a shift that occurred in the 90s toward repatriation, repatriation, and more repatriation—not third-country resettlement or other more durable solutions.

The zeitgeist seems to be send them back, and I find that very disturbing. I remember it was Refugees International and the U.S. Committee for Refugees that were so out in front during the Rwandan Holocaust, that none of those people were offered to come here or to some other country of resettlement. It was all a matter of warehouse and then send them back or something like warehousing.

So there is that international mind-set that the bureaucrats and the diplomats seem to have adopted, but there is also where do you put people when they cannot go back? Ellen Sauerbrey mentioned earlier that she is very much in favor and wants to champion the idea of education in the camps, and that is certainly needed. I noticed that when I was in Mukjar, as well as in Kalma, there were some efforts being made to educate, but it was always too little too late. Food and medicines were always the next crisis, whether or not there would be enough, so education drops off as a distant third or fourth. But if you could speak to that issue.

Ms. LIMÓN. Everyone keeps asking that same question, and we feel a couple of things. One, we believe there are policy alternatives that host governments, were the discussion to take place at high levels, would be willing to entertain. In fact, there are examples

around the world where refugees are not warehoused, where they are allowed to be legally within a country temporarily until they have an alternative solution. But we think, for instance, local housing arrangements for residual caseloads so that the donor nations could help host nations pay for linking refugees with sponsors who are in community organizations or local governments where people are response. Okay, fine. They are going to work. They are going to have a job. They are going to do what they have to do to get on with their lives.

We see camps as the last alternative for refugees while they are awaiting that solution. You are absolutely right, Mr. Chairman. Repatriation seems to be the only durable solution that the international community is really willing to accept these days, but that can take decades and decades and decades, and the price, not just these individuals refugees pay but the next generation because a lot of them have been educated in the camp, and they get pretty good educations. They even learn English, but then they cannot work. They cannot do anything.

This is not something that I think, as a leader in the international community, that we should be supporting. We need to be looking at ways to let these people have alternatives where they can actually exercise their rights and that we can move our aid and our creativeness to that instead of just making their prison better.

Mr. SMITH OF NEW JERSEY. I would just note parenthetically before our other witnesses may want to respond, you noted the Foreign Ops Bill of 2006 and the language that it had. We put that language in H.R. 2601, which is my bill, the State Department Reauthorization Bill. It passed the House, and we are still hoping that the Senate will take it up. It may not happen this Congress. I think that is an idea that needs to be asserted and reasserted over and over again, and I take your point that it has not been funded.

Mr. Bacon?

Mr. BACON. Well, first of all, I just want to say Ms. Limón is the world's expert on this, and USCRI has done a really wonderful job of lifting the warehousing issue to the top of everybody's agenda, but there are three durable solutions. Repatriation often does take a long time, but when it works, and we are beginning to see it working—that was the point of my testimony—it is the solution that allows people to clear out of camps the fastest. It may take a long while to get there, but once the ball starts rolling, it rolls pretty fast.

I think that if you look at two problems in Sudan, the north-south crisis, which took 21 years to resolve, and now we are just at the point of reaping the benefits of the comprehensive peace agreement, but we still have a long way to go before people get home, on the one hand, and Darfur on the other, where it is receiving intense world attention after 3 years, suggests that we can accelerate this if countries get involved. Our diplomacy has been key in both cases, but we got on to Darfur much faster as a nation than we got on to southern Sudan.

So there is more the world community can do to face these crises earlier and to prevent, we hope, the type of long-term displacement that Ms. Limón has talked about.

So I think we need to be very creative at all parts of the spectrum. We have to be clearly more creative on resettlement, but even if we are hugely creative on resettlement, and if we are five times more successful than we are now, we would be resettling 250,000 people a year out of a population of 11.5 million refugees. So resettlement probably is not going to do anything more than help certain very persecuted or lucky parts of the population.

We have to look at integration and, I think, do a much better job, and this is where USCRI has done such a good job in giving us new options. Finally, I think we have to work through UN peace-keeping, through diplomacy, to prevent the types of long-term displacement that was so characteristic of the 1990s.

Ms. BROWN. I would like to say that of special concern to the U.S. Conference of Catholic Bishops among this population who are often held for so many, many years are unaccompanied refugee minors, for whom we advocate the best-interest determination process happen very quickly. A few years in a child's life is many, many, many years that are wasted, and if you are speaking of holding a child for 10 years, you have held them for their entire childhood.

Mr. SMITH OF NEW JERSEY. We are the largest donor, but we still need to do significantly more.

I have found in the past, and this is regardless of the Administration—Clinton, Bush, Bush, Reagan—that every attempt that has been made to increase the amount of money for refugee protection. Even if we get the amendment passed, once it gets into conference the automatic drop-down is to the Administration's request, which is usually the OMB's request. But it is based on an assessment of what UNHCR put out in terms of their appeals rather than based on their needs.

So it is almost a twofold question: How do we get Congress to realize what you know so well, having lived it, that there are so many millions of people out there in desperate straits who sometimes do not even have cooking oil. Security is a big issue in the camps.

I will never forget. On one of the State Department bills, I offered an amendment to increase Radio Free Asia to 24 hours and everyone kept thinking that the \$50 million more that we put into the refugee budget was like a pot of unaccounted-for money. I had to beat off one amendment after another, it was amazing. Everybody said this money is not needed because that is what the Administration asked for.

Can we get to a needs-based budget, even if they put out two documents? We have a new high commissioner. I think he is very, very passionate about what he is doing. I have high hopes for him. They are going through a process of reform. That would help immensely if that were more meticulously laid out with, "Okay, U.S., can you do this? EU, can you do this?" rather than putting in an appeal that often falls on deaf ears.

Mr. BACON. Well, I could not agree with you more. I think that the high commissioner, Antonio Guterres, is trying to reform. I know he has cut back headquarters staff. He is holding back their funding. He is making it more results based than it has been in the past. He is setting clear goals and standards that he expects everybody to meet. My hope is that in a year or 2 he is going to

be able to show a real increase in effectiveness, which should make him a much more attractive solicitor of funds, and it should be easier for us and other countries to support him. I could not agree with you more. We do need a needs-based budget, and part of that, I think, requires better presentations by UNHCR.

Ms. LIMÓN. Mr. Chairman, I would just add to that, I agree with Ken that we need a needs-based budget based on the real needs of refugees. I think, earlier today, someone referred to compassion fatigue, and we do see that around the world where people just get tired of feeding a group of people for 10, 20, 30, 40, 50 years.

Our hope would be, of course, were refugees are allowed to become self-sufficient, allowed to take care of themselves, allowed to grow their own food, that the need would actually be diminished, and the refugees, if they can, could become self-sufficient, and what money there is available would go further for those people truly who could not help themselves.

Mr. SMITH OF NEW JERSEY. On material support, do we need legislation to redefine membership in a terrorist group?

And, secondly, if I could, Mr. Bacon, you mentioned that we are short \$521 million on peacekeeping. Is that cumulative over several years? We are actually going from about \$500 million to a billion for peacekeeping in this current budget, at least that is my understanding, and I, like you, believe that that is one of the best investments we can possibly make: 80,000 peacekeepers doing an enormous amount of difficult work that no individual country could probably do. They were right to get the Nobel Peace Prize some years back for the work that they do. It is hazardous work, to say the least.

Having said that, we have had hearings here, and we have raised issues of trafficking and exploitation in places like the Congo, but, by and large, it deserves our support. But the \$521 million; is that cumulative?

Mr. BACON. It is cumulative, and actually if the supplemental currently before Congress goes through with the current figures. I hear all sorts of rumors. There are going to be haircuts. Maybe you guys know how it will come out, but if the supplemental were to go through, that would reduce the arrears, the gap, by about 160 or \$170 million, so that would bring it down to a much lower amount. But this is a standard problem, that we are not always paying our full peacekeeping assessment.

Ms. LIMÓN. I will be quick, Mr. Chairman. The U.S. Committee for Refugees would be very pleased to see legislation clarifying material support. After the terrorist attacks on 9/11 when the admissions of refugees plummeted, we worked very hard, along with all of our colleagues, to really get people to understand the difference between a refugee and a terrorist, and it is so clear to us, but it was not really clear to everyone, and we had a lot of education to do.

We felt that we had basically overcome that, and that was a good thing, and then material support reared its ugly head, and now, with the way it is being applied, it actually indicts everyone but perhaps the lone refugee pacifist in the world. So we really think that clarifying legislation would be very helpful. Thank you.

Ms. BROWN. Yes, we support that. You also asked a question of do we need to look at the definition of membership in a group, and we believe that we do need to look at that and as well whether the group actually is a security threat. The KNU, as an example, is not a security threat to the United States. In fact, we have supported them in what their struggle is.

Mr. SMITH OF NEW JERSEY. Thank you. Mr. Payne?

Mr. PAYNE. Thank you. I will not belabor or prolong the hearing. I, unfortunately, had another group that have come to the country, and I had previously scheduled a meeting with them, so it took me out of this portion, but I certainly would like to commend you for your work, and we do have a lot of work to do still to be sure that we do not discriminate against the victims. In many instances, a person is from a particular country, and so they all become suspicious, and I think that is unfortunate. But if there are any questions that I have related to your testimony, I certainly will forward it to you and ask for your written answers to that. Once again, thank you very much. Thank you, Mr. Chairman.

Mr. SMITH OF NEW JERSEY. Thank you.

I want to thank our distinguished witnesses for your testimony, but above all, for your work on behalf of the disenfranchised, the refugees and asylum seekers the world over. I know that the U.S. Committee has provided some suggestions along this line, but any ideas, and if you could reduce it to a proposal, for what a law would look like, what legislation would look like, to rectify these problems.

At this point, it is an upward battle, but I think we can wear people down by convincing them and persuading them that this is the right course to take because there is a knee-jerk response out there. We saw it right after 9/11. Some was good; some of it was bad, some of the actions we took. So I think it is time to really get this refined and correct the deficiencies in the law. So if you could provide us with that information, we will begin that process ourselves. Again, thank you so very, very much. The hearing is adjourned.

[Whereupon, at 5:20 p.m., the Subcommittee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

RESPONSES FROM MR. PAUL ROSENZWEIG, ACTING ASSISTANT SECRETARY FOR POLICY DEVELOPMENT, U.S. DEPARTMENT OF HOMELAND SECURITY, TO QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS

#### MATERIAL SUPPORT BAR AND THE REFUGEE PROGRAM

*Question:*

*Can you explain the process by which the Administration plans to grant waivers of “material support” ground for inadmissibility?*

*Response:*

Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), the Secretary of Homeland Security or the Secretary of State, in consultation with each other and with the Attorney General, is empowered to make an unreviewable discretionary determination that the terrorism inadmissibility provision does not apply with respect to material support an alien has afforded to a terrorist organization or an individual that the alien knows or reasonably should know has engaged in a terrorist activity.

After extensive consultations among DHS and the Departments of State and Justice, the Secretary of State recently exercised her discretionary authority to not apply the material support inadmissibility provision to otherwise admissible Burmese Karen refugees in Thailand who provided material support to the Karen National Union (KNU) and its armed wing, the Karen National Liberation Army (KNLA). The Secretary has exercised this authority in two separate instances, the first covering only Burmese Karen at the Tham Hin camp and the second covering Burmese Karen at six other camps. These refugees have been identified as a population of special humanitarian concern to the United States due to the privations they have experienced during their flight from Burma and their residence at the camps. The Secretary’s decision with respect to the Karen was based on a number of considerations, including the collective assessment that this exercise of discretion serves the foreign policy interests of the United States and that the admission of these refugees will not compromise our national security.

The decision as to whether an individual refugee applicant meets the factual criteria established by the Secretary of State in her exercise of this discretionary authority is made by a DHS refugee adjudicator, who determines whether the applicant is credible and otherwise eligible for resettlement (but for the material support inadmissibility ground) and that all requisite identity and security checks have been conducted and allow for the individual to be resettled.

Like the decisions on the Burmese Karen refugees in Thailand, the decision whether to exercise this unreviewable discretionary authority with respect to applicants in other groups of refugees will be made on a case-by-case basis after the completion of consultations among DHS and the Departments of State and Justice that are informed by detailed assessments of the risks to our foreign policy and national security interests and counter-terrorism strategy. These inter-agency consultations seek to ensure that important national security interests and counter-terrorism efforts are harmonized with our foreign policy interests and our Nation’s historic role as the world’s leader in refugee resettlement.

*Question:*

*Is there a policy on the application of the material support bar to aliens whose support to “terrorist organizations” was done involuntarily or under duress?*

*Response:*

Under Section 212(a)(3)(B)(iv)(VI) of the INA, aliens who provide material support to individuals or organizations that engage in terrorist activity are inadmissible to the United States. The INA provides no exception for material support provided involuntarily or under duress.

*Question:*

*Is there a process or policy, to identify armed resistance groups as not being terrorist groups in appropriate cases?*

*Response:*

Under Section 212(a)(3) of the INA, terrorist activity is defined to include, among other things, any use of explosives, firearms, or other weapons or dangerous device with intent to endanger the safety of individuals or to cause substantial damage to property, except when done for personal monetary gain. The definition of terrorist organization refers not only to organized groups officially designated as such by the U.S. Government, but also to a group of two or more individuals engaged in, or who have a subgroup engaged in, terrorist activity. The law provides no exception for motivation (other than for acts done for personal monetary gain). The Board of Immigration Appeals recently issued *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006), in which the Board rejected the respondent's argument that the terrorism bar implicitly includes an exception for cases involving the use of justifiable force to repel attacks by forces of an illegitimate regime, recognizing that "Congress intentionally drafted the terrorist bars to relief very broadly, to include even those people described as 'freedom fighters,' and it did not intend to give [the Board] discretion to create exceptions for members of organizations to which our government might be sympathetic."

Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), the Secretary of Homeland Security or the Secretary of State, in consultation with each other and with the Attorney General, is empowered to make an unreviewable discretionary determination that the "terrorist organization" definition that applies to undesignated groups of two or more individuals will not apply "to a group solely by virtue of having a subgroup" that engages in terrorist activities. As with the discretionary authority not to apply the terrorist inadmissibility provision with respect to material support provided by an individual, the discretionary authority not to define a group as a "terrorist organization" may be exercised on a case-by-case basis after the completion of consultations among DHS and the Departments of State and Justice that are informed by detailed assessments of our foreign policy interests together with the risks to our national security interests and counter-terrorism strategy.

#### TRAINING REQUIREMENTS (IRFA §§ 602 AND 603)

*Question:*

*Can you describe the training given to each of the following dealing with then handling of claims of religious persecution claims, and can you attach a copy of current training materials addressing international religious freedom issues for each group:*  
(a) Asylum officers

*Response:*

Asylum Officers receive approximately five weeks of specialized training related to international human rights law, non-adversarial interview techniques, and other relevant national and international refugee laws and principles. The Asylum Officer Basic Training Course (AOBTC) includes a four-hour training module devoted to the interview and adjudication of asylum claims based on religion. I have attached the AOBTC Lesson, *The International Religious Freedom Act (IRFA) and Religious Persecution Claims*. The module includes an overview of IRFA with a focus on the provisions of Title VI, a discussion of the harm identified in IRFA as violations of religious freedom and particularly severe violations of religious freedom, an examination of legal precedent regarding asylum eligibility based on religious persecution, and an overview of resources on country conditions relating to religious freedom available to asylum officers. The material is presented to asylum officers through lecture, discussion, group analytical exercises, and group exercises on country conditions information. The training materials are updated regularly to include developments in policy and caselaw and have incorporated UNHCR's guidelines on the adjudication of religious-based protection claims, issued in April 2004. Further discussion of religious persecution is included whenever relevant throughout the five-week training, such as through decision writing and interviewing exercises. Additionally, continuing education on religious persecution is carried out at the local asylum offices during their mandatory four-hour weekly training sessions. Most recently, the



Asylum Division and the USCIS Office of the Chief Counsel initiated efforts to conduct updated training on IRFA and religious persecution for USCIS Asylum Officers. This collaborative effort was piloted at the Arlington Asylum Office on June 13, 2006, and finalized materials will be distributed to the other field offices for presentation later in the summer.

*Question:*

*(b) Immigration Inspectors who exercise expedited removal authority under section 235 of the Immigration and Nationality Act.*

*Response:*

CBP Officers receive extensive training, both at the CBP Academy and in the field regarding the grounds of inadmissibility, proper referrals to secondary, and immigration enforcement actions processing. Additionally, "Basic Admissibility Secondary Processing" which is taught at the CBP Academy, is a highly intensive and comprehensive 22-day training course that trains officers in admissibility decision-making, as well as all aspects of related legal statutes, regulations, policies and procedures. Once the officer determines the applicant to be inadmissible, the officer will determine the appropriate enforcement action. In addition to expedited removals, immigration enforcement actions include visa waiver program refusals, section 240 removal hearings, and referral for criminal prosecution.

Integral to the BASP is coursework designed to build awareness of asylum seekers. In Lesson 9, "Referring Credible Fear Cases," CBP officers study not only the circumstances that cause individuals to seek asylum in the United States, and particular issues and considerations that may arise during a secondary inspection, but also the legal status of asylum seekers under U.S. and international law. Among the laws and treaties that are reviewed during the lesson is the 1998 International Religious Freedom Act. This law requires certain aliens to be referred for an interview by an Asylum Officer in order to determine whether they have a credible fear of persecution, within the meaning of Section 235(b)(1)(B)(v) of the Act.

Officers are trained to be aware of the alien's nonverbal indicators, as well as stated fears of persecution or torture. If the alien indicates in any fashion or at any time during the inspections process, that he or she has a fear of persecution, or that he or she has suffered or may suffer torture, officers are required to refer the alien to an asylum officer for a credible fear determination. The obligatory questions on the Form I-867B are designed to help in determining whether the alien has such fear.

BASP Lesson 17, "Asylum and Expedited Removal," describes the procedures for conducting expedited removal of aliens at ports of entry. Officers are instructed to refer an alien for a credible fear interview if the alien expresses a fear of persecution, torture, or return to his country or an intent to apply for asylum in the United States.

Section 3 of the Basic Admissibility Secondary Processing Reference Manual, titled, "Credible Fear," contains an October 18, 2004 Muster that discusses the International Religious Freedom Act of 1998 and an October 11, 2004 Muster that references refugee and asylum applicants. The CBP Field Operations Academy presents two muster briefings per week to basic students, during which detailed explanations are provided of new occurrences or priorities within the agency. Approximately one-third of muster briefings are duplications of musters required by OFO-Headquarters in the ports, others are created by CBP Academy staff. The purpose of muster briefings is twofold: to familiarize the students with this method of information dissemination and to keep the students abreast of new occurrences and priorities in the agency that are not yet included in the curriculum.

*Question:*

*(c) Border Patrol agents who exercise expedited removal authority under section 235(b) of the Immigration and Nationality Act.*

*Response:*

Border Patrol agent trainees at the Border Patrol Academy in Artesia, New Mexico, started receiving expedited removal training effective April 6, 2006, as mandated by the CBP Office of Training and Development (OTD) and the Office of Border Patrol (OBP). The training educates agents on the background and applicable legal requirements, and provides them with the working knowledge (expertise) necessary to identify an expedited removal case and to initiate appropriate actions in the event an alien expresses a fear of persecution, torture, or return to his country or an intent to apply for asylum. Specifically, the training informs agents about the statutory grounds for asylum, including the fact that an alien could be eligible to asylum if he has experienced persecution, or has a well founded fear of future perse-

cution, because of his religion. The agents are also instructed that an alien who indicates an intention to apply for asylum, or who expresses a fear of persecution, a fear of torture, or a fear of return to his country, must be referred to an asylum officer, and that the agents may not attempt to evaluate the credibility or probability of the alien's claim but must leave that task to a qualified asylum officer.

*Question:*

*(d) DHS Trial Attorneys who argue asylum cases before the Executive Office for Immigration Review (EOIR).*

*Response:*

The U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, has not received or provided training specific to IRFA. All new attorneys receive training on the types of cases they will encounter in court, including asylum claims based on religion.

#### STANDARD PROCEDURES FOR THE U.S. REFUGEE PROGRAM (IRFA § 602)

*Question:*

*Can you describe the steps taken by the Department to ensure that case files prepared by overseas processing entities (OPEs) accurately reflect information provided by refugee applicants, and that genuine refugee applicants are not "disadvantaged or denied refugee status due to faulty case file preparation."*

*Response:*

The Department of Homeland Security defers to the Department of State for response.

#### REQUIREMENT TO ESTABLISH GUIDELINES TO ENSURE AGAINST "HOSTILE BIASES" IN THE REFUGEE PROGRAM (IRFA §§ 602 AND 603)

*Question:*

*Can you send us a copy of any current guidelines used to ensure against hostile biases in the asylum and refugee programs, and their implementation.*

*Response:*

Instruction aimed at highlighting and addressing the potential for bias in the process of refugee adjudications is interspersed prominently throughout the USCIS Refugee Affairs Division's Refugee Officer Training Course. I am enclosing excerpts from five different lessons (*Interviewing Part I: Overview of the Nonadversarial Refugee Interview; Interviewing Part III: Cross-Cultural Communication; Interviewing Part V: Interviewing Survivors; Credibility; and Decision-Making Overview*), which are used to train officers to be aware of biases they may have and to not allow bias and prejudice to impact the way they conduct interviews and adjudicate cases. These materials were used in the most recent officer trainings but remain under development. To remain a member of the Refugee Officer Corps, each officer must pass written exams that are based on these and other lessons.

The USCIS Asylum Division has developed procedures and practices designed to ensure against "hostile biases" by interpreters used in interviews conducted by asylum officers, *as required by IRFA § 603*. Asylum officers are trained in the AOBTC on techniques for effective communication through an interpreter. Attached is the AOBTC lesson, *Interviewing Part VI: Working with an Interpreter*. In the affirmative asylum context, applicants for asylum who cannot proceed with the asylum interview in English must provide their own interpreter. Prior to conducting any interpretation for the interview, the interpreter must take an oath to translate fully and accurately the proceedings of the asylum interview. If the interpreter is found to be misrepresenting the applicant's testimony, is incompetent, or otherwise displays improper conduct, the asylum officer may terminate the interview and reschedule it for a later date. Asylum office management has the discretion to bar particular interpreters from the asylum office based on the interpreter's misconduct. (Please see attached materials: Section II.J.4., "Interpreters," of the *Affirmative Asylum Procedures Manual* and related appendices (Appendix A-1 *Record of Applicant and Interpreter Oaths* and Appendix A-3 *Rescheduling of an Asylum Interview—Interpretation Problems*).)

In the expedited removal/credible fear process and in reasonable fear determinations (for aliens subject to administrative removal based on a conviction of an aggravated felony or the reinstatement of a prior removal order), USCIS provides professional interpreters through the use of contracted services. The contract between the interpreter service provider and USCIS has special provisions to ensure the security, confidentiality, and neutrality of the interview process. As a condition of em-

ployment, all interpreters must submit to USCIS a signed and notarized confidentiality and neutrality statement (attached). In addition, asylum officers will report through proper channels to the Asylum Division Contracting Officer Technical Representative (COTR) for the interpreter services contract any concerns about the accuracy or neutrality of the interpretation, which will in turn be raised to the management of the interpreter services company. (Please see attached memorandum "Award of New Contract for Interpretation Services," Memorandum from Joseph E. Langlois, Director, USCIS Asylum Division to Asylum Office Directors, October 27, 2005; see also Section III.E.3., "Interpreters," of the *Draft Credible Fear Procedures Manual*, April 2002, and Section III.D., "Asylum Office Arranges for Interpreter Services," of the *Draft Reasonable Fear Procedures Manual*, January 2003. These draft documents are currently in use, but are still undergoing final agency review and clearance.)

In February 2006, the Asylum Division instituted a procedure to have professional interpreters monitor the interpretation of affirmative asylum interviews. The role of the contract interpreter under this process is to monitor the quality of the interpretation conducted by the applicant-provided interpreter and raise to the asylum officer any concerns about the quality or accuracy of the interpretation. The interpreter monitor must take an "observer's oath" in addition to the blanket oath of confidentiality and neutrality signed at the time of hiring (see attached "Observer's Oath" Form). This procedure has been instituted across the eight asylum offices on a rolling basis, as the interpreter service has increased staffing to accommodate this procedure. Attached are draft guidelines on the interpreter monitoring procedure disseminated to the asylum field offices on February 8, 2006. The guidelines were not signed but distributed as a draft so that the Asylum Division can revise the procedures based on the experience in early implementation and issue final guidelines thereafter. (See attached draft memorandum, "Award of Interpreter Services Contract and Interim Guidance on Monitoring of Asylum Interviews by Contract Interpreters," DRAFT Memorandum from Joseph E. Langlois, Director, USCIS Asylum Division to Asylum Office Directors, January 8, 2006 version, disseminated to field offices on February 8, 2006.)

In addition, asylum officers receive specialized training on interviewing skills, including non-adversarial interviewing techniques, inter-cultural communication, and interviewing survivors of torture. The four-hour AOBTC lesson on inter-cultural communication is presented by instructors with expertise on communications skills and experience in using these skills in the refugee protection context. The eight-hour AOBTC lesson on interviewing survivors of torture is presented by a panel of experts from the medical and counseling fields with extensive practice in treating survivors of torture. New asylum officers attending the AOBTC participate in several practical exercises in which they experienced officers provide feedback on the new officers' interviewing skills, with particular focus on conducting a non-adversarial interview. In addition, the AOBTC examination includes a graded mock interview component in which officers are scored on their skill at conducting a nonadversarial interview. We are attaching three of the AOBTC lessons that address guarding against hostile biases in asylum interviews: *Interviewing Part I: Overview of Nonadversarial Interview*; *Interviewing Part IV: Inter-Cultural Communication and Other Factors that may Impede Communication at an Asylum Interview*; and *Interviewing Part V: Interviewing Survivors*.

#### INADMISSIBILITY OF RELIGIOUS FREEDOM VIOLATORS (IRFA § 604)

##### Question:

*Have any procedures been put in place by DHS to implement Section 604 of IRFA? Have lookouts or watch lists for such violators been developed? How many individuals have been denied entry under Section 604 of IRFA since its enactment in 1998?*

##### Response:

Section 604 is narrow in scope to specifically target aliens involved in severe violations of religious freedom, which is defined in Section 3(11) of the International Religious Freedom Act of 1998 (INA), as torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction or clandestine detention of those persons, or other flagrant denial of the right to life, liberty, or the security of persons. Because of this very narrow definition, and because CBP already has the ability to screen for watch-listed persons, further guidance is unnecessary, and there is no need to create a separate procedure to implement this legislation. Given that such violators would be identified through Department of State (DOS) lookouts, it is anticipated that those who may be subject to this ground of inadmissibility would be identified prior to ar-

rival into the U.S. and either denied a visa for travel to the U.S. or denied boarding before their flight to the U.S. CBP maintains an electronic interface with DOS to ensure that the agencies have access to the same information regarding persons known to have committed serious violations of religious freedom and other inadmissible aliens.

*Question:*

*Have lookouts or watch lists for such violators been developed?*

*Response:*

To date, there has not been a need to create a database for persons responsible for severe violations of religious freedom, separate and apart from existing watchlists of persons inadmissible to the United States. The number of persons known to have committed such violations has been small, and existing watchlists are sufficient to prevent their travel to and entry into the United States.

*Question:*

*How many individuals have been denied entry under Section 604 of IRFA since its enactment in 1998?*

*Response:*

Section 212(a)(2)(G) of the INA states that any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible. Queries of the Automated Biometric Identification System/Enforcement Case Tracking System (IDENT/ENFORCE) database indicate that Section 212(a)(2)(G) of the INA was not utilized to refuse admission to any subjects during the period October 2003 through the present.

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WRITTEN RESPONSES TO HEARING QUESTIONS POSED TO MS. RACHEL BRAND, ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF LEGAL POLICY, U.S. DEPARTMENT OF JUSTICE

MATERIAL SUPPORT BAR AND THE REFUGEE PROGRAM:

*Question:*

*Can you explain the process by which the Administration plans to grant waivers of "material support" ground for inadmissibility?*

*Response:*

As I stated in my testimony, the Administration believes that it is possible to balance our nation's historic commitment to accepting refugees and our post-September 11th national security concerns. To that end, the Departments of State, Justice, and Homeland Security—as well as the Intelligence Community—will examine the actions and situation of refugees or groups of refugees identified by the Administration for possible exercise of authority to render the material support bar inapplicable for particular refugees, including consideration of the activities and situation of each organization to which those refugees have provided material support. Once reliable and complete information is gathered regarding the activities and situation of an organization and the refugees who supported it, a decision will be made with input from all relevant agencies as to whether exercise of the inapplicability authority is appropriate in that case. Use of this interagency process ensures that all relevant concerns, including national security, humanitarian concerns, and diplomatic relations, are considered.

*Question:*

*Is there a policy on the application of the material support bar to aliens whose support to "terrorist organizations" was done involuntarily or under duress?*

*Response:*

Under Section 212(a)(3)(B)(iv)(VI) of the INA, aliens who provide material support to individuals or organizations that engage in terrorist activity are inadmissible to the United States. The INA does not specifically address material support provided involuntarily or under duress. However, Section 212(d)(3)(B)(i) of the INA, which grants discretion not to apply the material support exclusion to any provision of material support by an alien, could be invoked in any appropriate situation, including cases of involuntary action or duress.

*Question:*

*Is there a process or policy, to identify armed resistance groups as not being terrorist groups in appropriate cases?*

*Response:*

Members of armed resistance groups that meet the definition of “terrorist organization” are not admissible. With regard to material supporters of armed resistance groups, as noted above, the Administration is conducting case-by-case analyses of groups of refugees and each organization to determine whether exercise of the inapplicability authority is appropriate.

*Question:*

*How many asylum cases have been denied by the EOIR in the past year based on the “material support” bar?*

*Response:*

Because of the numerous issues involved in each case, the Department does not track cases based on areas of substantive law raised during litigation. Therefore, we do not have the information that would enable us to respond to this question.

*Question:*

*How many asylum cases raising this issue are currently pending before the BIA?*

*Response:*

As noted above, the Department does not track cases based on areas of substantive law raised during litigation. Therefore, we do not have the information that would enable us to respond to this question.

*Question:*

*How many asylum seekers whose cases were denied based on the material support bar have received final orders of removal?*

*Response:*

Again, the Department does not track cases based on areas of substantive law raised during litigation. Therefore, we do not have the information that would enable us to respond to this question.

*Question:*

*What is the status of implementation of the statutory authority to waive application of the material support bar with respect to aliens in removal proceedings?*

*Response:*

The Secretary of Homeland Security retains the statutory authority to exercise the inapplicability provision, in consultation with the Attorney General and the Secretary of State, once removal proceedings are instituted against an alien. We therefore defer to the Department of Homeland Security regarding the answer to this question. (The statute specifically prohibits the Secretary of State from exercising her authority once removal proceedings against an alien are instituted.)

#### OTHER QUESTIONS ASKED DURING THE HEARING:

*Question:*

*Representative Smith asked for an explanation of the Li v. Gonzales Case.*

*Response:*

As I noted at the hearing, the Departments of Justice and Homeland Security worked together to seek vacatur of a court of appeals decision ordering Xiaodong Li’s removal, based on new information provided by the U.S. Commission on International Religious Freedom. According to his applications for asylum and withholding of removal under sections 208 and 241(b)(3), respectively, of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), Li led a church in China that was not registered with the authorities, as required by a Chinese law that allows religious practice only within government-sanctioned religious organizations. Li’s religious meetings were discovered, and he was arrested and beaten by the authorities. The Board of Immigration Appeals agreed with the Immigration Judge that Li had failed to timely file his asylum application but reversed the Immigration Judge’s determination that Li was eligible for withholding of removal. The U.S. Court of Appeals for the Fifth Circuit affirmed in *Li v. Gonzales*, 420 F.3d 500 (5th Cir. 2005). The court upheld the Board’s determination that Chinese persecution of *unregistered* religious practice was not persecution “on account of” religion so as to

qualify for asylum or withholding of removal. The court based its holding on a State Department report in the record in that case, which, in the court's view, "establishe[d] that the Chinese government \* \* \* tolerates the Christian faith and seeks to punish only the unregistered aspects of Li's activities." 420 F.3d at 510.

After the court's decision, however, the Departments of Justice and Homeland Security obtained new evidence on country conditions in China from the U.S. Commission on International Religious Freedom. The evidence was material to the nature of restrictions on religious practice in such churches and the extent to which such restrictions prevented members from fully practicing their faith and placed them at risk. Based on this new evidence, the Board of Immigration Appeals reopened its decision and vacated its prior decision, reinstating the Immigration Judge's grant of withholding of removal. In turn, the Fifth Circuit vacated as moot the *Li* decision, which no longer stands as precedent. 429 F.3d 1153 (5th Cir. 2005). The Departments recognize that punishment for violation of oppressive religious registration requirements precluding the practice of an asylum-seeker's faith could constitute persecution on account of religion for purposes of asylum and withholding of removal.

*Question:*

*Representative Smith asked about the T-visa program for victims of trafficking in persons.*

*Response:*

Victims of a severe form of trafficking who have complied with reasonable requests for assistance in the investigation and prosecution of acts of trafficking may petition the U.S. Citizenship and Immigration Service ("USCIS") for a T visa. A victim who receives a T visa may remain in the United States for up to four years and may apply for lawful permanent residency in the third year. In Fiscal Year 2005, USCIS granted 229 applications for T visas. The Department of Justice closely coordinates with the Department of Homeland Security in the granting of T visas to ensure that they are granted to victims who have met the legal requirement to assist in the investigation and prosecution of those who have trafficked them. It is imperative that victims assist in order to convict the criminals, disrupt trafficking networks, and thereby prevent victimization of others in the future.

*Question:*

*Representative Watson asked why the United States has not signed the 1954 convention relating to the status of stateless persons and the 1961 convention on the reduction of statelessness and whether any changes to those conventions would change the U.S. position.*

*Response:*

I have referred your question to the Department of State.

